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FOREWORD

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TREASURY DECISIONS

UNDER INTERNAL REVENUE LAWS

OF THE UNITED STATES

Volume 9

January-December, 1906

As a copy of the original is practically unobtainable, this volume is offered to enable law libraries to complete their collection of government publications.

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TREASURY DECISIONS

UNDER

INTERNAL REVENUE LAWS

OF THE

UNITED STATES.

Vol. 9—January-December, 1906.

LESLIE M. SHAW,

Secretary of the Treasury.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1907.

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INTRODUCTION.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 31, 1906.

To officers of internal revenue and others:

The within decisions of the Commissioner of Internal Revenue, rendered during the calendar year 1906, upon the construction to be given to the various acts of Congress relating to the internal revenue, are published for the information and guidance of officers of the internal revenue and others concerned.

This volume contains rulings numbered from 964 to 1095, inclusive.

JOHN W. YERKES,
Commissioner.

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INTERNAL REVENUE.

(T. D. 964.)

Cigar factory—Enlargement or change.

Consent of sureties must be obtained.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 3, 1906.

SIR: In reply to your inquiry of the 28th ultimo, you are hereby advised that where, as you state, a cigar manufacturer desires to enlarge or change his factory premises and files a new form, 36½, describing the premises so enlarged and changed, the consent of the sureties on the bond of the cigar manufacturer should be procured to cover such change.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. C. E. BOULDEN, *Internal Revenue Agent, New York.*

(T. D. 965.)

Special taxes—Assessments—Liability of express companies.

In a suit for taxes based upon an assessment, the Government is not required in the first instance to go further in the proofs than to submit the assessment list. The assessment list regular in form makes out a *prima facie* case.

Where an express company, acting through its agent, sends orders for beer to brewers or other dealers, whether with or without previous orders from customers, and the beer thus ordered is shipped to the agent and the price thereof charged by the shippers to the express company, and is thereafter sold by the agent of the express company to customers applying therefor, the shipper not dealing with the local customer but charging the sale price to and receiving payment from the express company, that company becomes involved thereby in a special-tax liability under the internal-revenue laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 6, 1906.

To collectors of internal revenue and others concerned:

The appended decision of the United States circuit court of appeals, eighth circuit, is published for the information of all concerned.

JOHN W. YERKES, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.—No. 2204.

Western Express Company, plaintiff in error, v. *United States of America, defendant in error.*

In error to the Circuit Court of the United States for the District of North Dakota.

Before SANBORN, Circuit Judge, and PHILIPS and CARLAND, District Judges.

PHILIPS, District Judge, delivered the opinion of the court.

This is an action by the defendant in error, the United States, against the plaintiff in error, the Western Express Company, to recover special taxes assessed against the

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defendant as a wholesale and retail dealer in liquors. There are a large number of counts in the petition for assessments made against the express company for selling malt liquors at each of 26 stations on the line of the Minneapolis, St. Paul and Sault Ste. Marie Railway Company in North Dakota. North Dakota is a prohibition State.

On a trial to a jury, at the conclusion of the evidence, the respective counsel requested a peremptory instruction to the jury. Thereupon, on consideration, the court directed a verdict in favor of the plaintiff. By this action both parties conceded that there was in fact no case for the decision of the jury; and in legal effect submitted the whole case to the decision of the court.

When, pursuant to such requests, the court accepts these waivers, and by its peremptory instruction determines the questions of fact and of law in favor of one of the parties, both parties are estopped from assailing or revewing its finding upon disputed issues of fact, and are limited in the appellate court to a review of the two questions, was there any substantial evidence to sustain the court's findings of facts, and was there any error in its declaration or application of the law? United States *v.* Bishop (125 Fed. Rep., 183; 60 C. C. A., 123).

The controlling question, therefore, for decision is whether or not there was any evidence in the case to support the finding. If there was, the verdict must stand. The action being based upon assessments made by the proper revenue officers of the Government, the law presumes that these officers proceeded regularly; that on due inquiry they ascertained the existence of the essential facts subjecting the defendant to such tax. In this respect such officers act in a quasi judicial capacity, and their action stands as prima facie correct until this presumption, by countervailing proof, is met and overthrown by the party assessed. The Government was not required in the first instance to go further in the proofs than to submit the assessment list. (18 Int. Rev. Dec., 164, circuit court, northern district of New York; Delaware Railway Company *v.* Prettyman *et al.*, Fed. Cas., 3767, circuit court, district of Delaware; United States *v.* Rindskopf, 105 U. S., 418–422.)

When, therefore, the Government presented the assessment list, which is conceded to have been regular in form, and rested, it had made out a prima facie case. Without more, it was entitled to a verdict. It then devolved upon the defendant below to rebut the case made by a preponderance of evidence. There was not only some evidence in the case to support the verdict, but when all the evidence which supervened is examined it discloses many cumulative facts and circumstances, which, within the range of reasonable inference, tended to support the verdict.

The essential question on trial was whether or not, within the purview of section 3244 (vol. 2, U. S. Comp. Stats., 1901, p. 2098), the Express Company was engaged in the business of a dealer in liquors, as a retail or wholesale dealer. The fifth paragraph of said section declares that—

Every person who sells or offers for sale malt liquors in quantities of five gallons or less at one time, but who does not deal in spirituous liquors, shall be regarded as a retail dealer in malt liquors. Every person who sells or offers for sale malt liquors in larger quantities than five gallons at one time, but who does not deal in spirituous liquors, shall be regarded as a wholesale dealer in malt liquors.

Much of the unusually forceful discussion by counsel touching the relation between consignor and common carrier, when the relation of vender and vendee begins and ends, and where, in such relation, the real title to the property remains and when it passes, is more or less academic. The actual ownership of the property is not essential to fix upon the trafficker the quality of a dealer in liquors under this statute. The statute attaches to him the office of a dealer when he "sells or offers for sale malt liquors." The clerk of the owner of a saloon selling liquor for his employer who has no license, the "bootlegger" who covertly in the brush or alley-way purveys and sells liquor for the owner, are just as amenable to indictment, or for the revenue tax, as the owner of the liquor.

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It may be conceded that the express company as a public carrier, in the usual course of business, had a right, without liability to the Government for this tax, to carry beer for breweries at St. Paul and Minneapolis to their consignees within the State of North Dakota. In such a legitimate transaction the mere manner and time of delivery to the consignee and the payment therefor would not alter the office and liability of a carrier. But the evidence discloses a most unusual and extraordinary method and relation between the consignors and the carrier. The evidence was directed more particularly to such transactions had at one of the stations in North Dakota. But the case was tried on the practical concession that a like method of procedure obtained at all the other stations. The practice was after the following fashion: Persons in North Dakota desiring to obtain beer would go to the local agent of the express company and say they wanted so much beer of a given brew, when the agent would send in the order, generally in the name of a fictitious consignee, and sometimes in the name of a mere number—say 7 or 9. The agent, in instances, would send in the order not only to cover the quantity thus requested, but for an additional consignment. Sometimes he would send in an order without any such request from any known patron. The beer would be shipped to the agent, the price thereof charged by the shipper to the express company. The shipper knew not the local customer, and dealt not with him; but charged the sale price to and received payment from the express company. The beer, consisting of boxes and kegs, would be shipped in bulk, and when received by the agent would be stored in the company's warehouse. And while a preference would be given to those who had made to the agent a special request for a shipment, the excess would be delivered by the agent to any customer who applied to him for beer in such quantities as the buyer might desire. Thus would beer be sold by the agent to customers who had placed no previous orders with him. The agent would collect from the customer the sale price, plus the transportation charge, and in his returns to the express company would account for this money to it. The evidence further shows that the agent had with the consignor an understanding that as to any beer left over after the customers were supplied the same could be returned to it, and the money advanced therefor would be refunded. It is a noticeable fact, in this connection, that it does not appear that the consignor made any recompense to the express company for the cost of such carriage to and fro. Another remarkable fact is that, contrary to the ordinary method of dealing between express companies and consignees of articles carried, the agent took no receipts from parties to whom the beer was delivered, and kept no books showing such names.

And as further evidence of the fact that such agent in this traffic was plying the office of a dealer, like any other provident business man, he was thoughtful to be prepared to meet an expected large demand for supplies of beer from possible customers. For instance, on the second day of July, just two days before the Fourth of July, he sent in orders and received an unusually large consignment from the breweries, without special requests for all of it from known purchasers.

While the evidence does not show that the express company received any commissions as such on these shipments, it does show that it received each month a very large income thereon for the carriage charges. It enjoyed a monopoly of this business. Although there does not appear to have been any occasion or exigency for "hurry-up" orders for shipment of these regular, frequent consignments, no shipments were made on ordinary freight trains, although the cost of the latter method of transportation was much less than the express charges.

Certainly the express company was not performing the office in these transactions of a mere commercial broker, who is exempt, under the internal-revenue laws, from the payment of such tax.

The difference between a factor or commission merchant and a broker is stated by all the books to be this: A factor may buy and sell in his own name, and he has the

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goods in his possession; while a broker, as such, can not ordinarily buy or sell in his own name, and has no possession of the goods sold. Slack *v.* Tucker & Co. (23 Wall., 321–330).

The express agent has possession of the beer. He sold to customers who applied to him. He sold some of the beer on credit. If not paid for by the vendee the loss would presumably fall on the express company. The company got its compensation for its pains and risk in the augmented income to its business as a carrier. In this respect the situation was little, if any, different from that of a commission merchant—an intermediary—who sells on commission, accounting to the manufacturer for the purchase money. Such a person is liable to the Government for the revenue tax as a dealer under the statute. Slack *v.* Tucker & Co. (*supra*); Quinn *v.* Dimond (72 Fed. Rep., 993; 19 C. C. A., 336).

If this express company would shield itself from liability for such tax as a dealer in liquor, which the law extends to the carrier engaged in the useful business of interstate commerce, it is only needful that it conduct the transportation of liquor from without into a prohibition State just as it should any other commodity, without making its agencies and storehouse in the prohibition State a covert for violators of the internal policy of the State.

It results that the judgment of the circuit court should be affirmed.

(T. D. 966.)

Stamps on packages of smoking tobacco.

Small packages of smoking tobacco having the stamp thereon partially concealed by the manufacturer's advertising wrappers need not be seized or interfered with.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 13, 1906.

SIR: This office has received your letter of the 9th instant, inclosing a package of smoking tobacco manufactured by factory No. —, ———, ———, which has the stamp so affixed thereon as to show only the portion at each end of the package, the manufacturer's advertising wrapper being placed around the package in such manner as to cover up the balance of the stamp, and you ask whether this is allowed under the regulations, and if not, whether special permission has been given by this office to the factory named to partially conceal the stamp by the outside wrapper.

In reply, you are advised that while the regulations (p. 30) require that strip and other small stamps affixed to packages of tobacco, etc., shall be affixed on the *outside* of such packages, I have deemed it proper in the interest of the trade, in connection with advertising matter on tin boxes containing brands of sliced plug, used for smoking purposes, to permit the stamp to pass over the tobacco underneath the lid, the ends only showing on the sides of the box. Small packages of other kinds of smoking tobacco, with the stamp partially concealed by the paper wrappers, would present similar conditions,

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and the practice is now so generally followed by manufacturers I can not consistently object to it. Therefore such packages need not be seized or interfered with provided the stamp can be plainly seen at the ends. The outside wrapper, however, should not be pasted down onto the stamp, as it may be necessary for inspecting officers to assure themselves that the entire stamp is on the package, and that it is properly canceled.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. E. O. CROSSMAN,
Collector of Internal Revenue, Portsmouth, N. H.

(T. D. 967.)

Oleomargarine.

Verification of foreign landing certificate or consignee's declaration by notary public.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 15, 1906.

To collectors of internal revenue and others concerned:

The question having been presented to this office as to whether the verification by a notary public of a foreign landing certificate, covering the exportation of oleomargarine, signed by the consignee only, would come within the provision of Circular No. 669, dated March 9, 1905, which requires that "the declaration of a consignee that the goods have been delivered requires verification by *some officer* or agent," attention is called to letter addressed to an exporter of oleomargarine under date of November 3, 1905, as follows:

This office is in receipt of your letter of the 31st ultimo, relative to Department Circular No. 105, and Internal Revenue No. 674 of October 14, 1905, in which you ask, "Will a landing certificate be acceptable if it is signed by the consignee only; and in this event will you require the acknowledgment of a notary public or consul?" You desire to obviate the necessity for the verification by consuls or consular agents on foreign landing certificates covering oleomargarine exported free of tax, as the charges for such verification on these documents range from $2 to $3.50 each.

In reply, you are advised that Circular No. 669, dated March 9, 1905, of which circular of October 14 last is a supplement, states that "the declaration of a consignee that the goods have been delivered requires verification by *some officer* or agent." It is held that the verification by a notary public who affixes thereto his seal or stamp of office, or a certificate that he is authorized to administer oaths, would constitute such notary public an officer within the meaning of that part of the circular of March 9, 1905, above quoted, and the landing certificate so verified would be acceptable.

However, foreign landing certificates signed by the consignee only, without verification, are not acceptable.

The above-quoted letter fully answers the question on this point.

JOHN W. YERKES, *Commissioner.*

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(T. D. 968.)

Alcoholic compounds—External remedies.

The ruling in Circular 673 holding that special tax is required to be paid for the manufacture and sale of certain alcoholic compounds labeled as medicines therein described does not apply to external remedies, such as liniments.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1906.

SIR: In reply to your letter of inquiry without date, you are hereby informed that the internal-revenue laws of the United States do not contain any provision as to the quantity of alcohol that may be used in the manufacture of medicines. * * *

The ruling in Circular 673 has no application to external remedies, such as liniments, in the preparation of which alcohol is used. No special tax is required to be paid under these laws for the manufacture and sale of liniments. * * *

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———.

(T. D. 969.)

Sales of tobacco and cigars at public gatherings.

Ruling 952 of November 24, 1905, holding persons to be peddlers of tobacco who travel from one public gathering to another selling tobacco and cigars, does not apply to those who make such sales at booths or stands set up at these public gatherings.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 24, 1906.

SIR: Your letter of the 22d instant has been received, inquiring as to the effect of ruling 952 of November 24, 1905, in TREASURY DECISIONS of November 30, 1905, with reference to persons selling manufactured tobacco and cigars at public gatherings, such as farm vendues, fairs, bazaars, political meetings, etc.

That ruling applies only to persons traveling from one of these public gatherings to another and selling tobacco and cigars without having any particular place at which they make such sales. These persons are to be regarded as selling in the manner of peddlers, and, under the law, must be required to give bond and sell only original and full stamped packages.

The ruling does not apply to persons who put up booths or stands at any of these sales, and at these fixed places of business sell cigars and tobacco taken out of the stamped packages.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. H. L. HERSHEY, *Collector Ninth District, Lancaster, Pa.*

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(T. D. 970.)

Transfer of storekeepers, storekeeper-gaugers, and gaugers.

[Circular No. 13.—Int. Rev. No. 677.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 29, 1906.

Regulations No. 7, revised April 15, 1901 (p. 50, pars. 3, 4, and 5), are hereby so far modified as to require the transfer of the officers mentioned therein at such times only as in the opinion of the collector or Commissioner of Internal Revenue shall promote the best interests of the service.

Collectors will be governed by the foregoing instructions in the transfer of gaugers and storekeeper-gaugers when assigned by the Commissioner in the separate capacity of gaugers and the assignment specifies no particular place or kind of duty.

JOHN W. YERKES, *Commissioner.*

Approved:

LESLIE M. SHAW, *Secretary of the Treasury.*

(T. D. 971.)

Mixed flour.

"Pancake" and "compound," etc., flours are taxable as mixed flour when wheat or wheat flour is the principal constituent in quantity of materials used.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 27, 1906.

SIR: This office is in receipt of your letter of the 24th instant, relative to the liability of certain persons and firms to special taxes as manufacturers of mixed flour and stamp tax on such goods, by reason of the manufacture of so-called "pancake" and "compound" flours. You submit several "dodgers" or printed sheets advertising such preparations, placed upon the market by ———, doing business as ——— in ———.

There are five of these compounds produced by this manufacturer, advertised as ———, upon all five of which, you state, the manufacturer paid tax as mixed flour, under act of June 13, 1898, and up to the time the amendatory act of March 2, 1901, became effective, after which time he, and all other manufacturers of such flour in ———, discontinued paying special taxes and the stamp tax on such preparation. The relief of the manufacturers was evidently based by the

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collector upon the assumption that where these mixtures were marketed under names of ———, etc., flour, such compounds would come within the provision of the amended law, exempting the products which were not sold as wheat flour.

The original act (June 13, 1898) defined "mixed flour" as the food product made by the mixing or blending in whole or *in part* of wheat, or wheat flour, with any other grain or the product of any other grain, or other material, and this definition was modified by act of March 2, 1901, which provided that when wheat, or wheat flour was mixed or ground together as the *principal constituent in quantity* with any other grain, or the product of any other grain, or other material, excepting leavening material, not to exceed 5 per cent, the product so resulting was *mixed flour*, and where wheat or wheat flour was *not* the *principal constituent in quantity*, but the product sold or offered for sale as *wheat flour*, it was to be considered a mixed flour.

Section 35 of act of June 13, 1898, as amended by acts of March 2, 1901, and April 12, 1902, now reads as follows:

> That for the purposes of this Act, the words "mixed flour" shall be taken and construed to mean the food product resulting from the grinding or mixing together of wheat or wheat flour, as the principal constituent in quantity, with any other grain or the product of any other grain, or other material, except such material, and not the product of any grain, as is commonly used for baking purposes: *Provided*, That when the product resulting from the grinding or mixing together of wheat, or wheat flour with any other grain, or the product of any other grain, of which wheat or wheat flour is not the principal constituent as specified in the foregoing definition, is intended for sale, or is sold, or offered for sale as wheat flour, such product shall be held to be mixed flour within the meaning of this Act.

Under the above section this office has ruled that the product made by the mixing or grinding of wheat, or wheat flour, as the principal constituent in quantity with any other grain, or the product of any other grain, or other material except leavening material, which is eliminated from consideration by last-mentioned act, or where the proportion of wheat flour is so nearly equal that of the other ingredients that the percentage can only be determined by chemical analysis, such product is a mixed flour, no matter under what name or brand it may be marketed. But where wheat or wheat flour *is not* the principal constituent in quantity and the product *is not* sold or offered for sale as a wheat flour, it is not held to be a mixed flour.

This office can render no decision as to the taxability of the various compounds manufactured by Mr. ———, upon the printed matter submitted, but upon the receipt of sworn formulas, setting forth the proportions and ingredients used, decision in each instance will be rendered you.

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. J. W. McGINNIS, *Revenue Agent, Chicago, Ill.*

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(T. D. 972.)

Special tax—Merchants sending orders for liquors.

A merchant who receives an order from his customer for liquor, and transmits the order to an authorized liquor dealer who ships and bills the liquor directly to the customer, does not thereby become involved in special-tax liability under the internal-revenue laws, even though he receives a commission from the liquor dealer on such order, if the liquor dealer does not make out his bill against him for the liquor and makes no charge against him therefor, but charges only the customer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 3, 1906.

GENTLEMEN: Your letter of the 26th ultimo has been received, inquiring whether an old ruling of this office is still in force wherein it was held that where a customer, through his commission merchant, orders of a licensed liquor dealer wines or liquors and has same billed and shipped direct to himself, the commission merchant through whom he gave this order is not liable on this account for special tax under the internal-revenue laws, even if he received a commission from the liquor dealer for turning over to him said order.

This ruling is still in force, but it is applicable only to a case in which the liquor dealer makes no charge and no bill against the commission merchant, but charges the customer to whom the liquors were directly shipped by him, and makes out his bill accordingly against his customer.

In a case where the liquor dealer's bill is made out against the merchant, or where the bills are made out, one against the customer to whom the liquors are shipped and another against the merchant in which a lower price is charged than that in the bill to the customer, and both bills are sent to the merchant, the merchant is to be regarded as having bought the liquors himself and sold them again, and he is required to pay special tax accordingly, notwithstanding the fact that he neither received into his possession the liquors nor actually delivered them to the customer.

This is in consonance with the ruling of the Commissioner of Internal Revenue to which you refer, as you will see by reference to the ruling of July 16, 1881, as published in volume 27, Internal Revenue Record (p. 237), which will be shown you at the office of the collector of internal revenue in your district.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———.

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(T. D. 973.)

Special tax—State liquor agents.

Special tax is required to be paid under the internal-revenue laws of the United States by a State liquor commissioner, as well as by town liquor agents engaged in the sale of distilled spirits, wines, or malt liquors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 5, 1906.

SIR: Your letter of the 16th ultimo has been received, relating to the question of the special-tax liability of the State liquor commissioner of Maine under the internal-revenue laws of the United States.

Accompanying your letter is a copy of the law of the State of Maine providing for the appointment of a State liquor commissioner, which reads:

The governor, with the advice and consent of the council, shall appoint a commissioner to furnish municipal officers of towns and cities in the State with pure, unadulterated intoxicating liquors to be kept and sold for medicinal, mechanical, and manufacturing purposes. Said commissioner shall reside in this State, and shall have his place of business therein at such place as shall be approved by the governor and council, and shall hold his office for the term of four years, unless sooner removed by the governor with the advice and consent of the council, and until another is appointed in his stead. He shall be allowed reasonable expenses of office, and present his account, under oath, with vouchers therefor, to the governor and council, annually in December, to the last day of the preceding month, who shall audit the same and direct payment from the State treasury. He shall also be entitled to interest on the average capital actually invested by him in his stock of liquors, to be determined by the governor and council.

In the letters addressed to you on the 8th and 13th ultimo, copies of which accompany your letter, it is stated by the deputy secretary of the State of Maine that there were 18 town agencies for the sale of liquor maintained in the State of Maine during the year ending December 1, 1905, "each town agency being maintained solely by the town in which it is located, under the direction of the municipal officers," and that "the liquors purchased by the State liquor commissioner are paid for out of his personal funds, and the statutes provide that he shall supply the town agency at 10 per cent above cost."

It is further stated that "he is entitled to interest on the average capital actually invested by him in the stock of liquors that he keeps for this purpose, the size of his stock being under the direction of the governor and council," and "his compensation, expenses, and interest are paid out of the 10 per cent received by him from the towns maintaining agencies, and, after his accounts have been audited and allowed by the governor and council, the balance of uch 10 per cent is annually turned over to the State treasurer."

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Upon these facts it is held by this office, in view of the decision of the Supreme Court of the United States, relating to the dispensaries established by the law of the State of South Carolina for the sale of alcoholic liquors, as published in TREASURY DECISIONS of December 21, 1905 (T. D. 961), that the State liquor commissioner of Maine is required to pay special tax as a liquor dealer under the internal-revenue laws, as well as the town agents.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. E. O. CROSSMAN,
Collector Internal Revenue, Portsmouth, N. H.

(T. D. 974.)

Suits against collectors for recovery of taxes.

Schwarzchild & Sulzberger Company *v.* Collector Rucker, decided January 30, 1906.

In a suit for recovery of taxes the cause of action accrues after the expiration of six months from the time of making appeal to the Commissioner. If a claim for abatement of an assessment is made and decided against the claimant upon its merits and the tax is afterwards collected, it is not necessary to make claim for refund before commencing suit to recover the tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 8, 1906.

The appended opinion of the circuit court of the United States for the northern district of Georgia is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

Schwarzchild & Sulzberger Company v. *Rucker, collector.*

ON DEMURRER.

NEWMAN, *Circuit Judge:* This suit is brought to recover taxes claimed to have been illegally assessed and collected of the plaintiffs as dealers in oleomargarine. The case is now heard on demurrer on the ground that the action is barred by the statute of limitations. The suit is for three items—one item collected from the plaintiffs as dealers in oleomargarine in Atlanta, Ga., one at Savannah, Ga., and one at Macon, Ga. The petition shows that in June, 1901, a tax was assessed upon plaintiffs as wholesale dealers in oleomargarine at Atlanta—total tax and penalty, $540—and that an application was made to the Commissioner of Internal Revenue on Form 47 for an abatement of the tax, which application for abatement was rejected on the 17th day of August, 1901. Afterwards, on January 25, 1902, the collector demanded payment of the assessment, and the same was paid, under protest and to prevent the seizure of property, by plaintiffs. Afterwards, on March 18, 1902, plaintiffs filed with the Commissioner, on Form 46, an application for a refunding of this tax, which application was rejected October 9, 1903. This suit was filed in the office of the clerk of the superior court of Fulton County on December 28, 1904, having been afterwards, on the application of Rucker, collector, removed to this court.

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In June, 1901, an assessment of the same character was made against plaintiffs as dealers in oleomargarine at Savannah, Ga., the amount embracing the special tax and penalty being $540. On August 17, 1901, application was made to the Commissioner of Internal Revenue on Form No. 47 for an abatement of said assessment. Afterwards, on January 28, 1902, payment was demanded by the collector of the amount of said assessment, and the same was paid under protest and to prevent the seizure of its property. Afterwards, on March 18, 1902, petitioners filed on Form 46 an application with the Commissioner to refund the tax, which application was rejected on October 9, 1903.

As to these two items the question raised by this demurrer is as to when the cause of action accrued.

The language of section 3236, Revised Statutes, is as follows:

No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provision of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided*, That if such decision is delayed more than six months, from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

The next section here referred to is section 3227, so much of which as is material here reads as follows:

No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued.

It will be perceived from this that the plaintiff had a right to sue in six months after the appeal was taken to the Commissioner, which was six months after March 18, 1902.

It seems to me perfectly clear from the two sections of the Revised Statutes referred to, and which seem to be controlling here, that the plaintiff's cause of action accrued six months after the appeal was taken to the Commissioner of Internal Revenue. The language is:

That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

The very language which fixes the right to sue within six months, if the Commissioner shall fail to act within that time, refers also to the limitation period, and it is evident that the cause of action accrued after the expiration of six months from the time of entering the appeal. I think this is about as clear as anything can be.

The other item in this suit is for $996 taxes claimed by the collector, and paid by plaintiffs as wholesale dealers in oleomargarine at Macon, Ga. The tax was paid on December 29, 1903, and suit was brought, as has been stated, on December 28, 1904. In the meantime, and between the time the tax was assessed and its payment, application was made to the Commissioner of Internal Revenue for an abatement of the tax, and this was refused on October 10, 1903. The question made on demurrer to this item is whether it is necessary, when there has been an application to the Commissioner of Internal Revenue for an abatement of the tax after it is assessed and before it is paid, to appeal after the payment of the tax for its refunding.

The plaintiffs propose to amend the declaration and to allege that, on the application for an abatement of the tax assessed against them at Macon, the Commissioner considered the matter on its merits and determined that the tax was properly assessed and should be paid.

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Plaintiffs claim that this being true—that is, that the correctness of the tax having been considered on its merits by the Commissioner on the application for abatement—here was no necessity for an application subsequently to refund. I am inclined to think this contention is sound. While the pleadings do not show it, nor do I find the statute to be clear about it, even if there are rules and regulations made by the Commissioner of Internal Revenue which authorize the application for an abatement of the tax claimed to have been wrongfully assessed before it is paid, and also for an appeal to the Commissioner for a refund of the taxes after payment, as seems to be assumed in argument, it seems to me that either would be sufficient. If the Commissioner considers the matter on its merits on an application for an abatement of tax before payment and decides that the tax has been properly assessed and should be collected, there could hardly be any necessity for appealing to him to refund it, when, after a full investigation, he has just held that it was legally assessed, and directed that it should be paid.

In San Francisco, etc., Society *v.* Cary (2 Saw., 333), Circuit Judge Sawyer rules as follows:

The first point made by the defendant is that the suit was prematurely commenced on the ground that an appeal must be taken to the Commissioner after payment before suit brought. (14 Stat. L., III, 152, sec. 19, and regulations prescribed by the Secretary of the Treasury.)

But an appeal was taken from the assessment before payment and decided against plaintiff. This I think sufficient. There could be no object in appealing a second time to the same officer in the same case and upon precisely the same question. The Commissioner had already decided the identical question, and the object of law was accomplished in the first appeal.

The conclusion is that the demurrer to the declaration will be sustained so far as the suit seeks to recover the amounts paid at Atlanta and Savannah, and overruled as to the amount paid at Macon, and an order may be taken to that effect.

(T. D. 975.)

Suits on distiller's bonds.

United States *v.* United States Fidelity and Guaranty Company, decided February 6, 1906.—An assessment based upon estimates is lawful.—The forfeiture of spirits for fraud does not operate to relieve the bondsmen from liability to pay the tax.—The distiller against whom an assessment has been made for tax, is not entitled to have the proceeds of forfeited goods applied to reduce the assessment.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 9, 1906.

The appended opinion of the United States district court, district of Connecticut, is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT. No. 1482.

United States v. *United States Fidelity and Guaranty Company.*

PLATT, *District Judge:* This is a suit upon a distiller's bond, to which an answer, setting up three defenses, has been filed, and the present dispute arises upon a demurrer which attacks the several defenses.

The technical objection to the first defense has been removed by amendment. Beyond that, the validity of the defense depends upon the decision on the third defense.

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Passing by the technical objections to the second defense we find the gist of it to be that the assessment was based upon an estimate which turned out to have been erroneous; that the errors have been corrected, and that the balances left due have been paid in the manner set forth in the third defense.

An assessment based upon estimates is lawful, and a voluntary correction of manifest errors therein can not defeat the assessment. The rest of the defense also depends upon the decision on the third defense.

The demurrer to the third defense presents in a tangible and clearly defined way the exact contention between the parties. Let me see if I can state the case:

Certain taxes were due upon certain liquors. The distiller, prior to their becoming due, had given a bond, conditioned upon his faithful compliance with all laws and regulations touching distilling, and his payment of all penalties incurred or fines imposed for a violation thereof. The payment of the taxes imposed by the Government upon the product of the distillery is covered by the bond in suit. United States *v.* National Surety Company (122 Fed. Rep., 904). The revenue laws are remedial and are to be liberally construed. United States *v.* Stowell (133 U. S., p. 1).

It is assumed that the taxes are made by law a first lien upon the distillery property. The distiller has forfeited such property by a violation of the laws and regulations, referred to in the bond.

The defendant argues that the Government is obliged to apply the net moneys received from the sale of such forfeited property, toward the payment of the taxes due upon the liquors.

Did Congress by making such taxes a first lien upon the distillery property intend to compel the Government to relinquish all other modes of recovering the tax?

I can not so construe the law.

The right of lien seems to have been imposed merely as a further way of making the payment of the taxes assured. The bond in suit is also a means for obtaining payment of the tax. The tax is really a debt owed to the Government by the distiller and can be recovered by any method which could be applied in the recovery of any debt.

The personal liability of the distiller for the tax remains in full force, independently of the lien and that liability is guaranteed by the bond.

The bond must respond not only to the payment of the tax, but also to the forfeitures under which the property was sold.

The property has disappeared under the forfeiture, but the taxes remain unpaid, and the sureties are responsible.

If the distiller had paid the taxes, the liquors would have been forfeited, tax and all.

It would place a premium on delay to hold that other forfeited property should respond for unpaid taxes.

If these thoughts and others suggested by them were not enough, a conclusive one remains:

It is not thought that the lien upon the property can be said to continue upon the proceeds after the property has been forfeited and sold.

It was forfeited for fraud, not for nonpayment of taxes, and the entire right of the distiller in and to the property passed into the hands of the Government because of the fraud. The taxes remain due and unpaid. The surety was responsible for the taxes and for the fraud. It is not becoming in him to ask that both obligations shall be canceled in the way suggested.

Defendant relies upon the Ulrici case (111 U. S., 38), but that does not appear to be in point.

The bond in that suit was given for no other purpose than to secure the payment of taxes upon liquors which had been actually deposited in a warehouse. Such taxes had been paid, and therefore the condition of the bond had been fulfilled.

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We may admit that the revenue laws all have for their chief purpose the payment of the taxes due the Government, but to carry out that purpose many laws have been enacted, and many regulations made, and the bond in this suit was made broad enough to cover them all.

The demurrer is sustained with costs.

(T. D. 976.)

Legacy taxes.

Decision of United States circuit court in the case of Disston *et al.* *v.* McClain, collector, sustaining the demurrer of the Government to plaintiffs' claim.—A legacy payable annually in quarterly installments out of the income of personal property during life of beneficiary is taxable, being vested in possession and enjoyment prior to repeal of the act.—The tax is not alone on amount actually received by the beneficiary before the repeal of the act, but on the value of the life estate.—The annuity tables used in computing the value of the life estate were lawfully adopted by the Commissioner of Internal Revenue.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 12, 1906.

The appended opinion of the United States circuit court for the eastern district of Pennsylvania is published for the information of internal-revenue officers and others concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

William Disston, William H. Wright, and George McGowan, executors of the last will and testament of Horace C. Disston, deceased, v. *McClain, collector.*

HOLLAND, *J.:* In this demurrer to plaintiffs' statement of claim, the defendant alleges that under the provisions of sections 29 and 30 of the act of June 13, 1898, entitled "An Act to provide ways and means to meet war expenditures and for other purposes," and the several acts amending the same, the taxes paid by the plaintiffs under protest were lawfully assessed and collected by the defendant prior to taking effect of the act of April 12, 1902.

Horace C. Disston, a resident of Philadelphia, died June 13, 1900, and his will was probated June 19, 1900, in which the plaintiffs in this case were appointed his executors, and wherein he directed, *inter alia*, as follows:

Item: All the rest, residue, and remainder of my estate, real, personal, and mixed, of whatsoever kind and wheresoever situated I give, devise and bequeath unto my brother William Disston, my friend George McGowan and the Tacony Saving Fund, Safe Deposit, Title and Trust Company. In trust, nevertheless, for the following uses and purposes: To keep the same invested in such securities as I may have or to invest the same as they may determine and from the income arising from all of my said estate to pay first to my beloved friend Rachel Asch the sum of $15,000 per year during all the term of her natural life, such payment to be made to her by them in quarterly installments of $3,750 each, and the first installment to be paid to her three months after my decease, and thereafter quarterly as aforesaid.

The collector of internal revenue assessed and collected a tax from the plaintiffs on so much of the value of this life estate as was payable for life out of the income of the personal property of the deceased, upon the theory that this bequest to her is a

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legacy arising from personal property under the terms of the act of 1898, and to which she was entitled to the immediate possession and enjoyment. On the other hand, the plaintiffs contend that this bequest to Rachel Asch is a legacy of a series of sums, payable out of the income of the decedent's estate, and as such the amount she actually received prior to the repeal of the war-revenue act is alone taxable.

This income for life is exactly similar to the income devised for a certain period in the case of Vanderbilt *v.* Eidman (196 U. S., 480), in which case it was conceded that such a legacy is taxable as one presently in possession and enjoyment. This case rules the one at bar.

The annuity tables used in computing the value of this life estate were those lawfully adopted by the Commissioner of Internal Revenue, under date of December 16, 1898, as appears in T. D. 20442 and T. D. 20443. These tables were used to compute the value of the life estates in the leading case of Knowlton *v.* Moore (178 U. S., 41), and were accepted without question.

The demurrer to the plaintiffs' claim is sustained.

(T. D. 977.)

Special tax—Shipment of liquor by wholesale liquor dealer to himself.

Where a wholesale liquor dealer, upon an order received from a customer and at his request, ships the liquor to himself as consignee and sends the bill of lading to the customer who presents it at the freight house and receives the package of liquor, the sale is regarded as having been made at the place of delivery of liquor to the customer, and the shipper is thereby involved in special-tax liability as a wholesale liquor dealer at that place.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 16, 1906.

SIR: Your letter of the 29th ultimo has been received, inquiring whether a wholesale liquor dealer, receiving an order for liquor at his authorized place of business, can make shipment of the package ordered in the manner described as follows, without subjecting himself to special tax at the place where the package is actually delivered to the customer, viz:

The customer directs the wholesale liquor dealer to ship and bill such order in his own name (the wholesale liquor dealer's) and to send the bill of lading to the customer, who will, upon receipt of the same, present it at the freight house and get the package. The customer is good, and is carried on the books of the wholesale liquor dealer, and payment for the goods will be made at the authorized place of business of said wholesale liquor dealer.

In the case thus stated, the liquor ordered by the customer being shipped by the wholesale liquor dealer to himself and not to his customer's order, the liquor, upon arrival at its destination, still remains the property of the wholesale dealer, and the sending of the bill of lading taken out by the wholesale dealer in his own name to the customer does not take the ownership and control of the package of liquor from the wholesale dealer and transfer them to the customer. It is only when delivery is made to the customer of the package of

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liquor upon his presentation of the bill of lading at the freight house that the sale is completed by the wholesale dealer, who thereby involves himself in special-tax liability as a wholesale liquor dealer at that place.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. H. O. WEAVER,

Collector Fourth District, Burlington, Iowa.

(T. D. 978.)

Counterfeit cigar stamps.

Some of the points of difference between the genuine and the counterfeit.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 19, 1906.

SIR: A letter has been received from Deputy Collector ——— ———, referring to the letter of this office to you dated the 2d instant, in relation to the 10,000 cigars manufactured in 1899 at factory 3741 of W. M. Jacobs, ninth district of Pennsylvania, which cigars are now in the hands of ———.

The deputy collector states that he has had experts examine the stamps on these cigars, and that there seems to be some doubt as to their being counterfeit. He therefore forwarded a sample box of 50 cigars for inspection of the stamp and decision of this office.

In your letter of 31st ultimo, in regard to these cigars, you stated that you had no doubt but that the stamps are counterfeit.

The sample box sent by the deputy collector has been received and the stamp carefully inspected, and it is found to be counterfeit beyond any question.

Some of the points of difference between the genuine and the counterfeit are that in the latter the stamps for 50 cigars of the series of 1883 are of a different shade of blue, lighter than the genuine; the genuine has a greenish cast, counterfeit has not; the geometrical lathe work around the Old English letter "L" and monograms "U. S." and "I. R." on the counterfeit are darker and lines blurred; stars and dots in the several letters of the word "Cigars" imperfect; stars not clearly defined in the counterfeit.

Series of 1899.—Same differences as to color and as to stars in letters of the word "Cigars;" no shading below letters forming the monogram "U. S." in the counterfeit as there is in the genuine.

The first counterfeit stamps issued by Jacobs & Co. were issued in the spring of 1896, and were counterfeits of the genuine plate issued under the act of 1883. Another point of difference is the face of Clay in the counterfeit is much drawn; the lock of hair on the right

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side of the head is very dark on the counterfeit; on the genuine much lighter. When the geometric lathe work is examined with a magnifying glass the distinction between the genuine and counterfeit is apparent at once. The counterfeit is blurred and indistinct.

The box of cigars sent by Deputy ——— ——— will be retained on the files of this office.

As you are no doubt aware, efforts have been made to have Congress enact a bill to reimburse all innocent holders of cigars manufactured by Jacobs and covered by counterfeit stamps, but so far without avail. If relief should be granted in the future, Mr. ——— ——— will apparently be entitled to reimbursement of the tax now to be paid by him.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. DANIEL B. HEINER,
Collector Twenty-third District, Pittsburg, Pa.

(T. D. 979.)

Suits on distillers' bonds.

Decision of United States circuit court of appeals in the case of United States *v.* John E. Guest.—Where a distillery and its contents were seized and spirits were lost by reason of the negligence of a Government officer, after the same had been taken in possession by the Government, the bond is liable for the tax.—Interest at the rate of 1 per cent per month is recoverable as interest and not as penalty, and the five-year limitation prescribed by act of Congress does not apply.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 21, 1906.

The appended extract of opinion of the United States circuit court of appeals is published for the information of internal-revenue officers and others concerned.

JOHN W. YERKES, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.—No. 610.

United States, plaintiff in error, v. *John E. Guest, defendant in error.*

In error to the district court of the United States for the western district of South Carolina.

[February 6, 1906.]

Before PRITCHARD, Circuit Judge, and WADDILL, Jr., and KELLER, District Judges.

WADDILL, Jr., delivered the opinion of the court: The United States, the plaintiff in error, filed its complaint in the court below on the 19th day of March, 1904, against William A. Morgan, James L. Trammel, and John E. Guest, the latter of whom is the defendant in error here, to recover judgment upon a certain distiller's bond executed by the said William A. Morgan, as principal, with the said Trammel and Guest as sureties. The Government sought to recover the sum of $51.15, stamp tax on spirits contained in a certain package removed from one of its distillery warehouses, with

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interest thereon at the rate of 1 per cent per month from the 1st day of October, 1896; and also for the sum of $88.12 for deficiency spirits during the months of June and July, 1896, with interest at the same rate from the 1st day of February, 1897, until paid, together with a penalty of 5 per cent imposed upon the said two sums. Judgment by default was entered against the principal defendant; Trammel, surety, had left the State, and service was not had upon him; and the surety, John E. Guest, appeared and interposed his defense, setting up, among other things, the plea of the statute of limitations, the lack of notice to him as surety of the assessment, and specially pleaded as follows:

Specifically answering the allegations of the second and fourth paragraphs of the complaint, this defendant alleges on information and belief that some time during the summer of 1896 the collector of internal revenue for the district of South Carolina seized the distillery of the said William A. Morgan and all the whisky in the warehouse and took possession of the same; that the said collector, his agents and servants, so negligently guarded said whisky that large quantities thereof were abstracted from said warehouse, including the said package No. 57, and that this caused the alleged deficiency set forth and sued for in this action, and that, therefore, this defendant, as surety on said bond, is not liable therefor.

A jury was impaneled, and the allegations set up in said fourth paragraph admitted, as well as the fact that the cause of action arose more than six years prior to the time of the institution of the suit. Upon this pleading, the court, among other things, ruled that the recovery for the special tax of $51.15 could not be had against the defendant, because of the loss of the spirits upon which the tax was charged by reason of the negligence of a Government officer, after the same had been taken possession of by the Government, and without fault on the part of the defendant. The court further held that the statute of limitations did not run against the Government, as to the debt sued on, but that under section 1047 of the Revised Statutes, so far as the penalty was concerned, the statute limiting such recovery to five years applied; and that the 1 per cent claimed by the Government was in the nature of a penalty, and was barred, and only legal interest could be recovered; and the court thereupon instructed a verdict in favor of the Government against the defendant Guest for only the sum of $88.12, the deficiency sued for, with interest from the 7th day of February, 1897, at the rate of 7 per cent per annum, that being the legal interest rate in the State of South Carolina. The Government reserved exceptions to the rulings of the court, and presents for our consideration the correctness of such rulings in the three particulars mentioned, namely, whether recovery can be had against a surety on a distiller's bond, for losses arising in the distillery warehouse, after the spirits on which the tax was assessed had been seized by the Government officer; whether the 1 per cent per month specified in the statute was recoverable as interest upon the debt due the Government, and as against which the statute of limitations would not run; or, whether the same should be treated in the nature of a penalty, and subject to the five-year limitation prescribed by the act of Congress.

We are inclined to differ with the learned judge of the lower court in all three particulars. As to the loss of the spirits, it is true the distillery and its contents had been seized by the Government's representative, and the defendants may be said to have in no manner brought about the loss; still, it does not serve to relieve the liability under the bond. That the Government is not liable for negligence or laches of its officers or agent is well recognized and settled; and such negligence constitutes no bar or defense to a recovery upon a bond taken by the Government. Hart *v.* United States (95 U. S., 316; 24 L. ed., 479); Minturn *v.* United States (106 U. S., 437; 27 L. ed., 208); United States *v.* Witten (143 U. S., 76; 36 L. ed., 81).

Section 3221 of the Revised Statutes provides a method for the abatement of taxes on distilled spirits where the same have been lost or destroyed, namely, by appeal to the Secretary of the Treasury; and it is only under this section that relief in such cases can be secured.

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Section 3184 of the Revised Statutes prescribes interest at the rate of 1 per cent per month upon taxes and assessments of the character involved here; and our conclusion is that this is recoverable as interest and is not a penalty, there being a 5 per cent penalty specifically prescribed on the amount of the tax.

This is an ordinary suit, or, technically speaking, action of debt, upon a bond taken by the Government to secure its revenue; and on recovery under the same interest runs at the rate of 1 per cent per month, or 12 per cent per annum, the rate prescribed by the act of Congress; and the statute of limitations, as recognized by the court below, does not run against the Government in the collection of its debts; while it does against the enforcement of the penalties, by reason of the act of Congress in such case made and provided.

* * * * * * *

(T. D. 980.)

Renovated butter—Laws applicable.

Section 4 of the act of March 3, 1891, as amended by section 3 of the act of March 2, 1895, held by the court to be applicable to the oleomargarine act so that the removal of stamps and caution notices attached to original packages of renovated butter, which is the subject of interstate commerce, constituted an offense. The arrival of renovated butter duly stamped and labeled, as provided by law, within a State other than that from which it was shipped, did not divest the butter of its interstate commerce character so as to immediately entitle the consignee to remove such marks and labels without liability for violating such law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 26, 1906.

To collectors of internal revenue and others:

The appended decision of the United States district court relative to renovated butter is published for the information of all concerned.

JOHN W. YERKES, *Commissioner.*

DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK. APRIL 26, 1905. (137 Fed. Rep., 179.)

United States v. *Green.*

1. RENOVATED BUTTER—INTERSTATE COMMERCE—PACKAGES—STAMPS—REMOVAL—OFFENSES—STATUTES.

Act Congress May 9, 1902 (ch. 784, 32 Stat., 193; U. S. Comp. Stat. Supp., 1903, p. 265), providing for the inspection of renovated butter, imposes a special tax thereon, represented by coupon stamps; and section 5, 32 Stat., 196 (U. S. Comp. Stat. Supp., 1903, p. 269), declares that all applicable parts of act of August 13, 1890 (ch. 839, 26 Stat., 414; U. S. Comp. Stat., 1901, p. 3175), providing for inspection of meats for export, and of act of March 3, 1891 (ch. 555, 26 Stat., 1090), as amended March 2, 1895 (ch. 169, 28 Stat., 732; U. S. Comp. Stat., 1901, p. 3190), providing for the inspection of live cattle, etc., carcasses, meat products, etc., which are the subject of interstate commerce, shall apply to process or renovated butter. Act Congress March 3, 1891 (sec. 4), as amended by act March 2, 1895 (sec. 3), requires inspected meat products to be stamped and labeled, and declares that any person who shall knowingly and wrongfully deface and destroy any such stamps, according to the regulations of the Secretary of Agriculture, shall be guilty of misdemeanor. *Held* that such section 4 was applicable to the oleomargarine act, so that the removal of stamps and caution notices attached to original packages of renovated butter, which is the subject of interstate commerce, constituted an offense.

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2. SAME—TERMINATION OF INTERSTATE COMMERCE—SUBSEQUENT ACTS—EFFECT.

Under oleomargarine act (act Congress, May 9, 1902, ch. 784, 32 Stat., 193; U. S. Comp. Stat. Supp., 1903, p. 370, sec. 1), declaring that renovated butter transported into any State, and remaining there for use or sale, shall on arrival be subject to State laws for the exercise of police powers, as though produced within the State, the arrival of renovated butter, duly stamped and labeled, as provided by such act, within a State other than that from which it was shipped, did not divest the butter from its interstate commerce character so as to immediately entitle the consignee to remove such marks and labels without liability for violating such act.

Demurrer to indictment charging the defendant, a wholesale importer and dealer in butter, with the crime of having removed at Binghamton, Broome County, N. Y., the words "renovated butter," also the stamps and caution notices, from original packages of that article manufactured, so labeled or marked, and so stamped, etc., and sold to the defendant in the State of Ohio, and by him brought or shipped into the State of New York for sale at wholesale and in improper packages, and there resold after the said words, stamps, and notices had been removed. By this act of removing the said words and such stamps and notices from such packages, the defendant is alleged to have committed a crime in violation of the acts of March 2, 1895 (ch. 169, sec. 4, 28 Stat., 732; U. S. Comp. Stat., 1901, p. 3190), March 2, 1901 (ch. 805, 31 Stat., 926; U. S. Comp. Stat., 1901, p. 3193), and May 9, 1902 (ch. 784, 32 Stat., 193; U. S. Comp. Stat. Supp., 1903, p. 408). The defendant demurs on the ground that the said acts do not constitute a crime.

RAY, *District Judge:* By the oleomargarine act approved May 9, 1902 (ch., 784, 32 Stat., 194; U. S. Comp. Stat. Supp., 1903, p. 267; Public No. 110), it is provided (sec. 4), after defining butter and "adulterated butter:"

* * * * * * *

That "process butter" or "renovated butter" is hereby defined to mean butter which has been subjected to any process by which it is melted, clarified or refined and made to resemble genuine butter, always excepting "adulterated butter" as defined by this Act.

That special taxes are imposed as follows:

Manufacturers of process or renovated butter shall pay fifty dollars per year and manufacturers of adulterated butter shall pay six hundred dollars per year. Every person who engages in the production of process or renovated butter or adulterated butter as a business shall be considered to be a manufacturer thereof. * * *

That every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than one thousand and not more than five thousand dollars. * * *

That every manufacturer of process or renovated butter or adulterated butter shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number of his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue, and in a penal sum of not less than five hundred dollars and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner of Internal Revenue. * * *

That upon adulterated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of ten cents per pound, to be paid by the manufacturer thereof, and any fractional part of a pound shall be taxed as a pound, and that upon process or renovated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of one-fourth of one cent per pound, to be paid by the manufacturer thereof, and any fractional part of a pound shall be taxed as a pound. The tax to be levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing engraving, issuing, sale, accountabilty, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to the stamps provided by this section.

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Section 5 provides as follows:

All parts of an Act providing for an inspection of meats for exportation, approved August thirtieth, eighteen hundred and ninety, and of an Act to provide for the inspection of live cattle, hogs, and the carcasses and products thereof which are the subjects of interstate commerce, approved March third, eighteen hundred and ninety-one, and of amendment thereto approved March second, eighteen hundred and ninety-five, which are applicable to the subjects and purposes described in this section shall apply to process or renovated butter. And the Secretary of Agriculture is hereby authorized and required to cause a rigid sanitary inspection to be made, at such times as he may deem proper or necessary, of all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, and of the products thereof and materials going into the manufacture of the same. All process or renovated butter and the packages containing the same shall be marked with the words "Renovated Butter" or "Process Butter" and by such other marks, labels, or brands and in such manner as may be prescribed by the Secretary of Agriculture, and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State or Territory or the District of Columbia, or to any foreign country, until it has been marked as provided in this section. The Secretary of Agriculture shall make all needful regulations for carrying this section into effect, and shall cause to be ascertained and reported from time to time the quantity and quality of process or renovated butter manufactured, and the character and the condition of the material from which it is made. And he shall also have power to ascertain whether or not materials used in the manufacture of said process or renovated butter are deleterious to health or unwholesome in the finished product, and in case such deleterious or unwholesome materials are found to be used in product intended for exportation or shipment into other States or in course of exportation or shipment he shall have power to confiscate the same. Any person, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment not less than one month nor more than six months, or by both said punishments, in the discretion of the court.

The act approved March 3, 1891 (ch. 555, 26 Stat., 1090), as amended by agricultural appropriation bill, approved March 2, 1895 (ch. 169, 28 Stat., 782; U. S. Comp. Stat. 1901, p. 3190; Public No. 555), being "An Act to provide for the inspection of live cattle," etc., provides in section 1 for the inspection of all cattle, etc., intended for export to foreign countries from the United States, and in section 2 for a careful inspection of all live cattle, the meat of which is intended for exportation to any foreign country. Section 3 of such act reads as follows:

SEC. 3. The Secretary of Agriculture shall cause to be inspected prior to their slaughter, all cattle, sheep, and hogs which are the subjects of interstate commerce and which are about to be slaughtered at slaughter houses, canning, salting, packing, or rendering establishments in any State or Territory, the carcasses or products of which are to be transported and sold for human consumption in any other State or Territory or the District of Columbia, and in addition to the aforesaid inspection, there may be made in all cases where the Secretary of Agriculture may deem necessary or expedient under the rules and regulations to be by him prescribed, a post-mortem examination of the carcasses of all cattle, sheep, and hogs, about to be prepared for human consumption at any slaughter house, canning, salting, packing, or rendering establishment in any State or Territory or the District of Columbia, which are the subjects of interstate commerce.

Section 4 of the act, as amended, reads as follows:

SEC. 4. That said examination shall be made in the manner provided by rules and regulations to be prescribed by the Secretary of Agriculture, and after said examination the carcasses and products of all cattle, sheep, and swine found to be free of disease and wholesome, sound, and fit for human food, shall be marked, stamped, or labeled for identification as may be provided by said rules and regulations of the Secretary of Agriculture. Any person who shall forge, counterfeit, simulate, imitate, falsely represent, or use without authority, or knowingly and wrongfully alter, deface, or destroy any of the marks, stamps, or other devices provided for in the regulations of the Secretary of Agriculture, of any such carcasses or their products, or who shall forge, counterfeit, simulate, imitate, falsely represent, or use without authority, or knowingly and wrongfully alter, deface, or destroy any certificate or stamp provided in said regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof

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shall be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. The Secretary of Agriculture is hereby authorized to make such rules and regulations as he may decide to be necessary to prevent the transportation from one State or Territory or the District of Columbia into any other State or Territory or the District of Columbia, or to any foreign country of the condemned carcasses or parts of carcasses of cattle, sheep, and swine, which have been inspected in accordance with the provisions of this Act. Any person, company, or corporation owning or operating any such slaughter house, abattoir, or meat curing, packing, or canning establishment, or any employee of the same, that shall willfully violate any provision of this Act shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished for each offense by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

It will be noted that section 3 of the act of March 3, 1891, provides for the inspection prior to slaughter of all cattle, sheep, and hogs which are the subject of interstate commerce, and which are about to be slaughtered at certain establishments in any State or Territory of the United States, and the carcasses or products of which are to be transported and sold for human consumption in any other State or Territory than the one in which such cattle, etc., are slaughtered. A post-mortem examination of the carcasses of such animals about to be prepared for human consumption at such places may also be made when same are the subjects of interstate commerce. This examination is to be made in the manner provided by rules and regulations to be prescribed by the Secretary of Agriculture, and after such examination such carcasses and products as are found to be free of disease, wholesome, sound, and fit for human food are to be marked, stamped, or labeled for identification in such manner as may be provided by the rules and regulations of the Secretary of Agriculture. Evidently it was the purpose of Congress to provide for an inspection and an examination of all such animals and of the meat, etc., of all such animals intended for human food, and either made or intended to be made the subject of interstate commerce. Section 4 clearly provides for the marking, stamping, or labeling of these products, and the purpose of such marking, stamping, or labeling is declared to be the identification of such meats or products. Evidently the means of identification, to wit, the marks, stamps, or labels, are to attend, go with, and be attached to these meats or products until they have reached the hands of the consumer. If not, the law would be complied with by merely marking, stamping, or labeling these meats or products; and the purchaser or manufacturer would be at liberty to remove, cancel, or destroy the marks, stamps, or labels immediately thereafter, or at any time when he desired to transfer the title thereto to another person, and keep such person in ignorance of the fact that the meats or products had been subject to the inspection and examination above referred to, and were or had been the subjects of interstate commerce. Section 4 declares, among other things, that any person who shall knowingly and wrongfully alter, deface, or destroy any of the marks, stamps, or other devices provided for in the regulations of the Secretary of Agriculture, of any such carcasses or other products, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $1,000, or imprisonment not exceeding one year, or by both said punishments, in the discretion of the courts.

These marks, stamps, or labels kept upon the meat products referred to will tell to the officers of the Government and to all dealers whether or not such products have been properly inspected and examined, and whether or not they are or have been subjects of interstate commerce. Such marks, etc., will also tell whether or not such meats have been approved by the proper authorities as fit for human consumption. They will also enable the Government to follow and identify such meats, etc., if for any reason such action becomes necessary. Section 5 of the oleomargarine act, approved May 9, 1902, and above quoted, has made the provisions of the above act approved March 3, 1891, as amended, applicable to process or renovated butter, and has provided that the Secretary of Agriculture shall cause a rigid sanitary inspection to be made of all factories and storehouses where process and renovated butter is

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manufactured, packed, or prepared for market, and of the products thereof, and of all materials going into the manufacture of same. The oleomargarine act also provides that:

All process or renovated butter and the packages containing the same shall be marked with the words "Renovated Butter" or "Process Butter" and by such other marks, labels, or brands and in such manner as may be prescribed by the Secretary of Agriculture, and no process or renovated butter shall be shipped or transported from its place of manufacture into any other State or Territory or the District of Columbia, or to any foreign country, until it has been marked as provided in this section.

The oleomargarine act, approved May 9, 1902, not only provides that renovated butter and the packages containing the same shall be marked with the words "renovated butter" or "process butter," but that it shall not be transported or shipped into any State or Territory or any foreign country other than that of its manufacture, until it has been so marked. Section 5 of that act also imposes a penalty for the shipment, transportation, or removal of such renovated butter to another State or Territory, if such provision for marking or labeling shall not have been complied with.

Congress evidently had a purpose in providing in section 5 that all parts of the act for an inspection of meats, etc., and above referred to, applicable to the subjects and purposes described in the oleomargarine act should apply to process or renovated butter. The provisions in the oleomargarine act providing for inspection and the making of needful rules and regulations for carrying the act into effect, etc., correspond, as to purpose, etc., with the provisions of sections 1, 2, and 3 of the act for inspection of live cattle, etc., approved March 3, 1891, and as subsequently amended. In the oleomargarine act we find no provision making it a criminal offense to forge, counterfeit, etc., or to knowingly and wrongfully alter, deface, or destroy any of the marks, stamps, or other devices provided for in the regulations of the Secretary of Agriculture or in the law; but we must conclude, and it is evident, that there is as much necessity for such a provision in regard to renovated or process butter as in reference to meats, etc., intended for human consumption. Butter is used largely for human food, and the act bears on its face abundant evidence that one of its purposes is to prevent the interstate transportation and sale of process or renovated butter unless properly stamped, labeled, etc.

Is it necessary, proper, or advisable that the stamps, marks, labels, etc., upon renovated or process butter or the packages containing same, shall not be removed, altered, or defaced until such article has reached the hands of the consumer? Evidently so. Otherwise, at any time after the process or renovated butter has left the factory, on its way to another State or Territory, the labels and marks may be removed with impunity, and especially after such renovated butter has reached another State is the person transporting it at liberty to remove all such marks. Its identity as process or renovated butter is then destroyed, and it may be sold and resold in the State or Territory to which shipped as genuine butter, or, as applied to this case, the renovated butter, manufactured in Ohio, and being a subject of interstate commerce, and having entered into interstate commerce, having been shipped to and received in the State of New York by a dealer in butter, and not a consumer, is, with the marks removed, placed upon the market as genuine butter, and, with the marks to identify it as process or renovated butter removed, may be transported to the State of Connecticut or any other State, or to a foreign country, as genuine butter. If the marks, etc., "for identification," have been removed, the Government can not follow it even while remaining an article of interstate commerce. If such stamps, labels, etc., may be removed then the purpose of the law, aside from the payment of the original tax imposed upon such a product is absolutely defeated. It is evident that Congress intended to incorporate and has incorporated into the oleomargarine law the act approved May 9, 1902, section 4 of the act approved March 3, 1891, being "An Act to provide for the inspection of live cattle, hogs, and the carcasses and products thereof, which are the subjects of interstate commerce, and for other purposes," as amended, so far as applicable, and section

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4, as amended, is applicable and pertinent and necessary to carry into full force and effect the purpose of the oleomargarine law, which applies to renovated or process butter. Applying the provisions of section 4 of the act of March 3, 1891, as amended, to the oleomargarine law, and we would have that section incorporated therein read as follows:

That said examination shall be made in the manner provided by rules and regulations to be prescribed by the Secretary of Agriculture, and after said examination all process and renovated butter found to be wholesome, sound and fit for human food shall be marked, stamped or labeled for identification as may be provided by said rules and regulations of the Secretary of Agriculture. Any person who shall forge, counterfeit, simulate, imitate, falsely represent or use without authority or knowingly and wrongfully alter, deface or destroy any of the marks, stamps or other devices provided for in the regulations of the Secretary of Agriculture of any such process or renovated butter or who shall forge, counterfeit, simulate, imitate, falsely represent or use without authority, or knowingly and wrongfully alter, deface or destroy any certificate or stamp provided in said regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. * * *

Substantially the only change necessary to be made in section 4 in order to adapt it to the oleomargarine act is to strike out the words "carcasses or other products" wherever they occur, and insert in lieu thereof the words "process or renovated butter."

It seems to this court self-evident that the plain intent and purpose of Congress was to make it a criminal offense and punishable to forge, counterfeit, simulate, imitate, falsely represent, or use without authority, or knowingly and wrongfully alter, deface, or destroy, any of the marks, stamps, or other devices provided for in the regulations of the Secretary of Agriculture of any process or renovated butter, or to forge, counterfeit, simulate, imitate, falsely represent, or use without authority, or to knowingly and wrongfully alter, deface, or destroy any certificate or stamp provided in said regulation and to declare either of such offenses a misdemeanor, and to provide a punishment on conviction by fine not exceeding $1,000, or imprisonment not exceeding one year, or both, in the discretion of the court. Instead of incorporating the language of the act of March 3, 1891, as amended March 2, 1895, into the oleomargarine law said act was referred to, and it is explicitly provided that:

All parts of an Act providing for the inspection of meats for exportation, approved August thirtieth, eighteen hundred and ninety, and of An Act to provide for the inspection of live cattle and hogs and the carcasses and the products thereof, which are the subjects of interstate commerce, approved March third, eighteen hundred and ninety-one, and of the amendment thereto approved March second, eighteen hundred and ninety-five, which are applicable to the subjects and purposes described in this section shall apply to process or renovated butter.

It follows necessarily that if the purposes of the oleomargarine law are substantially the same as the purposes of the meat and cattle inspection law, above referred to, the provision above referred to, making it a crime to remove or deface the stamps, marks, etc., has been incorporated in, and must be read into and as a part of, the oleomargarine law. Congress is not supposed to have used the language it did in section 5 of the oleomargarine act without a purpose, and the language used either incorporates the criminal provisions referred to into that act, or fails to incorporate any part of the cattle and meat inspection law into the oleomargarine act; and the language of section 5, referred to, becomes meaningless and inoperative.

Section 4 of the oleomargarine act, among other things, provides:

* * * And that upon process or renovated butter, when manufactured or sold or removed for consumption or use, there shall be assessed and collected a tax of one-fourth of one cent per pound to be paid by the manufacturer thereof, and any fractional part of a pound shall be taxed as a pound. The tax to be levied by this section shall be represented by coupon stamps, and the provisions of existing laws governing engraving, issuing, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to the stamps provided by this section.

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Without going in detail into the provisions of law relating to the affixing of stamps, etc., and the cancellation thereof, it is sufficient to call attention to section 3364 of the Revised Statutes (U. S. Comp. Stat., 1901, p. 2202), which provides for the affixing of a label to each package of tobacco or snuff manufactured; and such section also provides that—

Every manufacturer of tobacco who neglects to print on or affix such label to any package containing tobacco made by or for him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined fifty dollars for each package in respect to which such offense shall be committed.

See, also, sections 3373, 3374 (U. S. Comp. Stat. 1901, p. 2206).

The act of June 6, 1896 (ch. 337, 29 Stat., 255; U. S. Comp. Stat. 1901, p. 2239), entitled "An Act defining cheese and also imposing a tax upon and regulating the manufacture, sale, importation and exportation of filled cheese," contains the following section (sec. 9):

That upon all filled cheese which shall be manufactured there shall be assessed and collected a tax of one cent per pound, to be paid by the manufacturer thereof; and any fractional part of a pound in a package shall be taxed as a pound. The tax levied by this section shall be represented by coupon stamps; and the provisions of existing laws governing the engraving, issue, sale, accountability, effacement and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section.

This provision incorporating into that law the existing provisions of law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff was made the subject of discussion by the Supreme Court of the United States in Cornell *v.* Coyne (192 U. S., 418; 24 Sup. Ct. Rep., 383; 48 L. ed., 504). Both in the opinion of the court by Mr. Justice Brewer, and in the dissenting opinion by Mr. Justice Harlan, that section and its effect are discussed; and it is nowhere suggested that the language of section 9 of the filled-cheese act does not fully incorporate therein the provisions of existing law relating to the engraving and effacement and destruction of stamps on packages of tobacco and snuff.

In the opinion of this court the provisions of law referred to are effectively incorporated in the oleomargarine law, and are to be read and enforced as a part thereof.

But for section 1 of the act, process or renovated butter would remain an article subject of interstate commerce until it had reached the hand of some purchaser, in the State to which carried, other than the general dealer importing it for sale only. How far section 1 operates to permit the purchaser of process or renovated butter, who has removed it to a State other than the one where manufactured, to "treat it as his own," or "do with it and the packages in which contained as he likes," is a necessary subject of inquiry. Section 1 reads:

That all articles known as oleomargarine, butterine, imitation, process, renovated, or adulterated butter, or imitation cheese, or any substance in the semblance of butter or cheese not the usual product of the dairy and not made exclusively of pure and unadulterated milk or cream, transported into any State or Territory or the District of Columbia, and remaining therein for use, consumption, sale, or storage therein, shall, upon the arrival within the limits of such State or Territory or the District of Columbia, be subject to the operation and effect of the laws of such State or Territory or the District of Columbia, enacted in the exercise of its police powers to the same extent and in the same manner as though such articles or substances had been produced in such State or Territory or the District of Columbia, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

This court is not prepared to assent to the claim that this section wholly divests the articles named therein, including process or renovated butter, of their character as subjects of interstate commerce, immediately on their arrival in a State other than that of their production, at least to such an extent as to permit the removal of all marks, labels, etc., required by the national law to be affixed when a subject of interstate commerce. Marked and labeled by order of the General Government "for identification" and stamped, the tax having been paid, the process or renovated butter so

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marked or labeled is distinguishable from all other. Other process or renovated butter made in the same factory, and equally subject to the law, but not inspected, marked, labeled, or stamped, may be shipped into another State at the same time. Has the General Government lost jurisdiction over the latter because of section 1 of the act in question? May not the Government officials follow it? Can inspection or tax, or both, be avoided by shipping it over the border of the State? Has not the Government marked and labeled, or caused to be marked and labeled, that which was examined and inspected, and on which the tax was paid, for purposes of identification—for the purpose of distinguishing it from that not inspected and examined and on which the tax has not been paid? Has not the Government the right to demand that such marks and labels and stamps shall remain until the article reaches the ultimate consumer, or, at least, until it has passed to a purchaser in the State to which taken and has become commingled in the common mass of property in the State? Does not the purchaser who takes the article from one State to another take it with knowledge of the law, and does he not assent to the proposition that such marks, etc., shall remain?

It is true that section 1 of this act is substantially the same as a similar section in what was known as the "Wilson bill," and which was made the subject of examination and decision by the Supreme Court of the United States in *In re* Rahrer (140 U. S., 545; 11 Sup. Ct., 865; 35 L. ed., 572). In that case the court said (p. 560, 140 U. S.; p. 868, 11 Sup. Ct.; 35 L. ed., 572):

Congress has now spoken, and declared that imported liquors or liquids shall, upon arrival in a State, fall within the category of domestic articles of a similar nature.

And again (p. 562, 140 U. S.; p. 869, 11 Sup. Ct. Rep.; 35 L. ed., 572):

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

As early as the decision of Brown *v.* Maryland (12 Wheat., 419; 6 L. ed., 678), it was held that interstate commerce could not be stopped at the external boundaries of the State, but must enter the interior of the State and includes a sale therein. This power to sell, as a part of interstate commerce, was applied in that case to foreign commerce, but Chief Justice Marshall said the power would be the same as applied to commerce between the States.

In Schollenberger *v.* Pennsylvania (171 U. S., p. 23; 18 Sup. Ct. Rep., 765; 43 L. ed., 49), the court said:

In the absence of Congressional legislation, therefore, the right to import a lawful article of commerce from one State to another continues until a sale in the original package in which the article was introduced into the State.

Without going into the numerous cases bearing to some extent, even though indirectly, on the question, this court is of the opinion that in making process or renovated butter transported into a State, and remaining therein for use, consumption, sale, or storage therein, subject on arrival in such State to the operation and effect of the laws of such State enacted in the exercise of its police power to the same extent and in the same manner as though such articles had been produced in such State, and declaring that same shall not be exempted from such laws by reason of being introduced into such State in original packages or otherwise, Congress did not intend to confer any power and has not conferred any power on any person to remove the marks, labels, stamps, etc., from process or renovated butter. When the packages are used, the marks, stamps, etc., are to be destroyed. New York has passed no law allowing this to be done, and it is not seen that such a law could be passed in the legitimate exercise of the police power of the State. Section 1 of the oleomargarine act was not intended to abrogate any penalty imposed for the violation of the penal provisions referred to, or to permit the acts therein forbidden, or to empower a State to make any law interfering with the operation of such laws, unless there should arise a conflict between the laws of the

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United States and those of the State passed in the legitimate exercise of its police power. It is perfectly clear that to permit the removal of the stamps, marks, labels, etc., on packages of a food product of this character, and specifically authorized by law, while such articles remain an article of interstate commerce, or even thereafter, when we consider the objects and purposes of the law, would not only defeat the objects and purposes of the legislative body as to inspection, etc., but open the doors wide to frauds on the revenue. The placing of the marks, etc., on the packages implies they are to remain.

Attention has been called to the proviso in the act of March 2, 1901, "An Act making appropriation for the Department of Agriculture for the fiscal year ending June 30, 1902" (31 Stat., 926). That proviso reads as follows:

That the Secretary of Agriculture may construe the provisions of the Act of March third, eighteen hundred and ninety-one, as amended March second, eighteen hundred and ninety-five, for the inspection of live cattle and products thereof, to include dairy products intended for exportation to any foreign country and may apply, under rules and regulations to be prescribed by him, the provisions of said Act for inspection and certification appropriate for ascertaining the purity and quality of such products, and may cause the same to be so marked, stamped or labeled as to secure their identity and make known in markets of foreign countries to which they may be sent from the United States their purity, quality and grade; and all the provisions of said Act relating to live cattle and products thereof for export shall apply to dairy products so inspected and certified.

I find nothing in this proviso inconsistent with the views expressed. This proviso amplifies the power of the Secretary of Agriculture as to dairy products intended for exportation to any foreign country, but does not purport to limit the powers before granted by the acts to which attention has been invited. It has no possible reference to dairy products transported or to be transported from one State to another—interstate commerce, pure and simple.

It is not necessary here to recite the rules and regulations of the Secretary of Agriculture duly made and promulgated pursuant to and by virtue of the statutes above quoted. It is sufficient to say that they are ample, in due form, and provide for coupon stamps to be securely affixed to the side of the package and canceled. "Such stamps must contain the name of the collector, his district and State, and show thereon the date of payment of the tax, the number of pounds, and the number of the factory." Also for labels on each package, on which are to be printed the number of the factory, the revenue district and State in which situated, and also a notice containing the words "renovated butter" or "process butter," etc. These stamps, marks, or labels, and notices, affixed to packages of renovated butter at the factory in Ohio, were removed by the defendant after the same reached the city of Binghamton, N. Y., where the packages were put in cold storage. The defendant purchased the goods in Ohio, brought them to New York for sale, where he removed all these stamps and marks, and thereafter sold same—such renovated butter—in New York.

The indictment states facts constituting a crime, and the demurrer thereto is overruled.

(T. D. 981.)

Gross receipts.

The business of mining natural gas and selling it to consumers was not taxable under section 27, act of June 13, 1898; and the receipts (benefits) derived from transporting the gas by pipe line, in carrying on that business, being inseparable from the receipts of the business, are not within the taxing provisions of the statute.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 27, 1906.

The appended decision of the United States circuit court of appeals for the seventh circuit, in United States, plaintiff in error, *v.*

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Consumers' Gas Trust Company, defendant in error, is published for the information of all concerned.

JOHN W. YERKES, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT.—OCTOBER SESSION, 1905.

United States, plaintiff in error, v. *Consumers' Gas Trust Company, defendant in error.*

BAKER, *Circuit Judge,* delivered the opinion of the court: Section 27 exacts revenue from all persons engaged in certain businesses, provided such persons come within a certain condition. The businesses are refining petroleum, refining sugar, and transporting oil or other products through pipe lines owned or controlled by the transporter. The condition is that the persons engaged in those businesses have gross annual receipts from their respective businesses in excess of $250,000.

The business of mining natural gas and selling it to consumers was not taxed. That was the only business in which defendant in error engaged or had authority to engage, and from that business alone its entire income was derived. As well tax artificial-gas companies and water companies, because in their business of getting and selling gas and water to their customers they use pipe lines as means of delivery. As well include within a tax on the gross receipts of parcel-delivery companies the total sales of a dry goods house that uses its own conveyances as a means of delivering parcels of goods sold to its customers. Carothers' Appeal (118 Pa. St., 485); United States *v.* Northwestern Ohio Natural Gas Company (— Fed. Rep., —). If defendant in error had engaged in a business within the statute, then receipts derived from every facility for promoting that business would be within the statute. Spreckels Sugar Refining Company *v.* McClain (192 U. S., 397). But since the business was not within the statute, receipts (benefits in promoting or cheapening the business) derived from facilities used in carrying on the business are inseparable from the receipts of the business and are therefore not within the statute.

The judgment is affirmed.

(T. D. 982.)

Special tax.

Shipments of liquor with bills of lading.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 27, 1906.

SIR: * * * In your letters you set out the method used by your clients in shipping spirits to other points than the ones covered by special-tax stamps.

In the main, the method is within the regulation heretofore promulgated by me. I desire to call your attention, however, to a change which should be made in the bill of lading. While the bill of lading may be made out to the shipper, it should be indorsed by the shipper, not in blank, but to the purchaser, so that the indorsement upon the bill of lading will show the owner to be the same individual as the one named upon the shipping tag attached to the goods transported. With the bill of lading so indorsed, it may be sent with draft attached

to a bank for collection, and thus the whole transaction will constitute a sale at the point of shipment and not at the point of destination. * * *

Respectfully, JOHN W. YERKES, *Commissioner*.

Mr. ——— ———.

(T. D. 983.)

Stamp tax on manifests under the war-revenue act.

Supreme Court decision in the case of United States *v.* New York and Cuba Mail Steamship Company, reversing the judgment of the United States district court (125 Fed. Rep., 320).—The United States concedes the correctness of the ruling of the district court that the essential character of the stamp tax on manifests was that of a tax on exports, but this case is governed by the case of Chesebrough *v.* United States (192 U. S., 253). As the stamps were purchased voluntarily and without protest, and were affixed voluntarily and without protest, the parties had no right to maintain a suit against the Government for recovery.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 3, 1906.

The appended decision of the United States Supreme Court in the case of United States *v.* New York and Cuba Mail Steamship Company is published for the information of all concerned.

JOHN W. YERKES, *Commissioner*.

SUPREME COURT OF THE UNITED STATES.—No. 116.—OCTOBER TERM, 1905.

United States, plaintiff in error, v. *New York and Cuba Mail Steamship Company.*

In error to the district court of the United States for the southern district of New York.

[February 19, 1906.]

Mr. Justice MCKENNA delivered the opinion of the court.

The defendant in error filed a petition in the district court to recover the amount paid by it for documentary stamps used on manifests of cargoes on certain vessels bound to foreign ports, as required by an act of Congress approved June 13, 1898, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes."

The United States demurred to the petition on the ground that it did not state facts sufficient to constitute a claim against it. The demurrer was overruled and judgment entered for the sum of $240, the amount of claim. (125 Fed. Rep., 320.)

It appears from the opinion of the district court that the constitutionality of the tax was alone submitted for decision, and the court, upon the authority of Fairbank *v.* United States (181 U. S., 283), held that the tax was unconstitutional.

In the Fairbank case it was held that a stamp tax on bills of lading imposed by the act of June 13 was a tax on exports, and therefore void. In the case at bar the district court observed "that the essential character of the stamp tax on manifests was that of a tax on exports, in the same sense in which a stamp on a bill of lading was a tax on exports." The United States now concedes the correctness of this ruling, but urges nevertheless that the judgment for defendant in error was erroneous because, as is contended, the stamps were purchased and affixed voluntarily and without protest. For this, Chesebrough *v.* United States (192 U. S., 253) is adduced as controlling. In that case recovery was sought for the price of stamps affixed to a deed in compliance with Schedule A of the act of June 13, 1898. The unconstitutionality of the act was asserted by Chesebrough, but was not discussed by the court. The decision was based

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on the ground that the payment of the taxes was voluntary. Chesebrough contended that section 7 of the act, which made it a misdemeanor to omit to fix stamps to the instruments enumerated, constituted such coercion as made the payment involuntary, and besides that, his vendee was unwilling to accept the deed without the stamps required by the act, and that he "under compulsion of said law," in order to receive the consideration for his conveyance, to enable his deed to be recorded and received in evidence and to give a title free from doubt, purchased stamps from the United States collector of internal revenue and placed them upon the deed.

What is the duress alleged in the case at bar? The averment of the petition is—

That said act being in force, under compulsion and through fear of criminal prosecution, and in order to obtain clearance papers which could not have been procured without the delivery to the collector of the port of New York, of outward foreign manifests of cargo stamped as aforesaid, and without which clearance papers the vessels hereinafter named would have been prevented from sailing, or would have become liable for the penalty imposed by section 4197 of the Revised Statutes of the United States, said James E. Ward & Co., for and on behalf of your petitioner and as such general agents as aforesaid, purchased and affixed to the said outward foreign manifests of cargo and canceled internal-revenue documentary stamps of the United States of the face value of $240, as appears more fully by the exhibit hereto annexed and made a part of this petition, and marked "Exhibit A," which contains the name of the vessel, the date of delivery to said collector of the outward foreign manifests of cargo, the alleged tax on which is sought to be recovered, and the face value of the documentary internal-revenue stamp affixed thereto.

It is alleged that the stamps were purchased from Walter H. Stiner, a dealer in internal-revenue stamps, on various days subsequent to January 1, 1900, and that Stiner purchased them from the collector of internal revenue, and the proceeds thereof were duly paid over to the United States.

In this case, as in the Chesebrough case, the collector was not informed at the time of the purchase of the particular purpose for which the stamps were to be used, and no intimation was given him, written or oral, that defendant in error claimed that the law regarding such stamps was unconstitutional, and that it was making the purchase under duress. And, expressing the principle to be applied, the court said, in the Chesebrough case, "even a protest or notice will not avail if the payment be made voluntarily, with full knowledge of all the circumstances, and without any coercion by the actual or threatened exercise of power possessed, or supposed to be possessed, by the party exacting or receiving the payment, over the person or property of the party making the payment, from which the latter has no other means of immediate relief than such payment."

Applying that principle to the allegation that Chesebrough's vendee was unwilling to accept an unstamped conveyance, it was said—

If that constituted duress as between Chesebrough and his building company, it was a matter with which the collector had nothing to do. On the face of the petition the purchase was purely voluntary and made under mutual mistake of law if the law were unconstitutional.

It is, however, insisted that these observations are not apposite to the case at bar. The coercion, it is contended that Chesebrough alleged, was between him and some third party. In the case at bar the coercion was exerted "between the petitioner [defendant in error] and the very authorities who demanded and compelled the payment of the tax," through section 4197 of the Revised Statutes of the United States. This section requires the master or person in charge of any vessel bound for a foreign port to deliver to the collector of the district a manifest, and upon its delivery the collector shall grant a clearance for such vessel and her cargo. It is provided—

If any vessel bound to a foreign port departs on her voyage to such foreign port without delivering such manifest and obtaining a clearance, as hereby required, the master or other person having the charge or command of such vessel shall be liable to a penalty of five hundred dollars for every such offense. (Sec. 4197, Rev. Stat. U. S.)

We do not think this section makes a difference in the cases. The destination of the stamps can not affect the payment of the tax which they represent. It may be

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more or less of an inducement to submit to the tax, but who can determine the degree? The loss of a purchaser, as in the Chesebrough case, may be of much more concern than the payment of the penalty for violating the provisions of section 4197. Besides, whatever element of coercion there was came from the United States, and it was not as immediate in the case of the manifests as in the case of the deed. The applicable principle is expressed in the extract from the Chesebrough case, which we have given above. It is stated in Railroad Company *v.* Commissioners (98 U. S., 541), and quoted from that case in Little *v.* Bowers (134 U. S., p. 554), as follows:

Where a party pays an illegal demand, with full knowledge of all the facts which render such demand illegal, without an immediate and urgent necessity therefor, or unless to release his person or property from detention, or to prevent an immediate seizure of his person or property, such payment must be deemed voluntary, and can not be recovered back.

There was no such imminence in the duress charged by defendant in error. It purchased the stamps of a dealer at various times. No information was given to the collector of internal revenue of the particular purpose nor claim that the law was unconstitutional. There was no claim of the collector of the port from whom the clearances were asked that defendant in error was acting under the restraint of the law and yielding only to enable his ships to depart to their destinations. All determining conditions, therefore, are the same as in the Chesebrough case.

2. It is, however, contended that even though the stamps were purchased without any duress or coercion, that under the act of Congress of May 12, 1900, entitled "An Act authorizing the Commissioner of Internal Revenue to redeem or make allowance for internal revenue stamps," the Commissioner must make allowance for the stamps used by the petitioner, and the Commissioner having declined to do so the defendant in error has a right of action under the Tucker act. The provision of the act of May 12, relied on, is as follows:

That the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal-revenue tax, as may have been spoiled, destroyed or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through some mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected.

The argument is that by this provision "the question of duress or compulsion is taken entirely out of the case," because in most of the instances enumerated "it is inconceivable that there should be any protest or duress." And it is further alleged that the act of 1900 was not considered in the Chesebrough case. It certainly does not follow that, because in some instances protest or duress can not exist that they can not exist in other cases, nor that the statute intended to destroy the difference between voluntary and involuntary payment of taxes. In the Chesebrough case section 3220 of the Revised Statutes of the United States was considered. It authorized the Commissioner of Internal Revenue "to remit, refund and pay back all taxes * * * that appear to be unjustly assessed or exclusive in amount, *or in any manner wrongfully collected.*" The words in italics are identical with those in the act of May 12, which are relied on by defendant in error. Commenting on section 3220, the court said, in the Chesebrough case—

It is argued that the provision of section 3220, for the repayment of judgments against the collector, rendered protest or notice unnecessary for his protection. But it was clearly demanded for the protection of the Government in conducting the extensive business of dealing in stamps, which were sold and delivered in quantities, and without it there would not be the slightest vestige of involuntary payment in transactions like that under consideration. And we find no right of recovery, expressly or by necessary implication, conferred by statute in such circumstances.

We therefore think that this case is governed by the Chesebrough case, and on its authority judgment is reversed and case remanded with directions to sustain the demurrer.

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(T. D. 984.)

Tobacco peddler's bond.

The bond of a tobacco peddler is a continuing obligation, and its validity is not affected by failure of the peddler to pay premium to a surety or guarantee company on the bond; and the collector need not call for a new bond in such case where the sureties are good and sufficient and there has been no extension of territory to be covered.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 9, 1906.

SIR: In your letter of the 19th ultimo, referring to the statement on page 11 of regulations No. 8, concerning the bond of a peddler of tobacco, that "a renewal receipt showing payment of premium to a surety or guarantee company, as surety on the bond, will be accepted as a renewal of said bond on the part of the surety," you state that a question arises in the case of a peddler who, you say, "makes return on Form 277 in February, 1905, and files a bond on Form 111, reregisters July 1, 1905, for the year ending June 30, 1906," but "fails to pay the premium and is thus unable to file the renewal receipt," as to whether "the bond is valid for that portion of the year from February to June, 1906."

The reply of this office is that the failure of the peddler of tobacco to pay the premium does not affect the validity of his bond.

The statement to which you refer in the regulations as to the acceptance of a renewal receipt showing payment of premium as a renewal of the bond on the part of the surety is not to be taken as modifying in any manner the paragraph immediately preceding this in the regulations, viz, that—

The bond executed by a peddler of tobacco will be regarded as a continuing liability and it will not be necessary for such person to execute an annual bond on Form 111, or a new statement on Form 95; but such person, on continuing business, will be required on the first day of July of each year to make return for registry on Form 277, and if he proposes to peddle in any other places and States than mentioned in his original statement, Form 95, he shall then be required to file a new statement on said form and execute a new bond on Form 111.

You therefore need not call for a new bond in the case of a peddler of tobacco where the sureties are good and sufficient, and there has been no extension of territory to be covered. The bond remains good whether the premium is paid or not, and the question with the collector is solely as to the sufficiency of the bond. The question of payment of premium is between the surety company and the tobacco peddler, and this office has no jurisdiction in the matter of the failure of the peddler to pay the premium to the surety on his bond. It is for the surety company to adopt whatever legal means it has for collecting the premiums on the bonds which it signs.

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It has never been necessary to require new bonds each and every year from peddlers of tobacco, and the prevailing practice of collectors is not to call for a new bond where the bond on file is satisfactory and there is no extension of territory.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. W. FRANK KINNEY,
Collector Internal Revenue, Hartford, Conn.

(T. D. 985.)

Alcohol withdrawn from bond, free of tax, for use of the United States.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 10, 1906.

The following letter is published for the information of internal-revenue officers and others concerned.

JOHN W. YERKES, *Commissioner.*

TREASURY DEPARTMENT, *Washington, March 9, 1906.*

SIR: I have the honor to acknowledge the receipt of the letter of the Quartermaster-General, U. S. A., of the 3d instant, forwarded under your indorsement of the 5th instant.

Replying specifically to the questions asked by the Quartermaster-General, you are informed—

1. That alcohol may be purchased or contracted for by the quartermasters' department in bulk, and withdrawn in original packages (barrels) under the provisions of Treasury Department Circular 104 of 1904, which has superseded Treasury Department Circular 188 of 1898, for delivery at ports in the Philippine Islands, or other over-sea ports, as well as in the United States, free of tax, under section 3464, Revised Statutes.

2. When delivered in bulk—*i. e.*, in original packages—at the various depots of the quartermaster's department in the United States, free of tax, alcohol may be recased by the depot quartermaster in 5-gallon tins, 2 tins to a case, for shipment to the Philippine Islands or other over-sea ports.

In order to avoid detention, or seizure by the revenue officers, when so recased the cases should be branded "Property of the United States, for the use of the Government," and in addition thereto there should be pasted on each case a label, reading, "For shipment to depot quartermaster at (over-sea port of destination)," to be signed by the depot quartermaster making the shipment.

3. Where it is desired that the recasing should be done by the contractors, before delivery to the depot quartermaster in the United States, of alcohol intended for shipment to the Philippine Islands or other over-sea ports, free of tax, such recasing can be done only in the distillery warehouse. * * *

Respectfully, LESLIE M. SHAW, *Secretary.*

The SECRETARY OF WAR.

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(T. D. 986.)

Legacy taxes under the war-revenue act.

A legacy to an adopted daughter not within any of the degrees of consanguinity mentioned in the statute is taxable as to a stranger in blood.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 12, 1906.

The appended decision of the circuit court of the United States for the district of Maryland, in the case of William S. Kerr *et al.* v. Collector Goldsborough, is published for the information of all concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.
AT LAW.

William S. Kerr et al. v. *Philip L. Goldsborough, collector.*

Demurrer by the defendant to a suit to recover from the collector of internal revenue an alleged excess of legacy or succession tax claimed to have been illegally exacted under act of June 13, 1898, amended by act of March 2, 1901.

MORRIS, *District Judge:* Under the will of the late John Sherman, his adopted daughter, Mary Sherman McCallum, became entitled in the year 1900 to receive from his executors the sum of $90,044.39 in money, which sum was subject to the legacy or succession tax imposed by the above acts of Congress.

The United States internal-revenue officers assessed the tax at $7.50 per $100, the rate provided by the act of Congress for strangers in blood to the decedent, and the tax so assessed amounted to $6,753.32. The executors paid this assessment under protest, claiming that the tax should be assessed at $1.12½ per $100, the rate provided by the act of Congress for one whose legal relationship to the decedent was that of a child.

The executors were forced under protest to pay and did, on November 1, 1903, pay the amount demanded and now sue the collector to recover back the sum of $5,740.33, being the excess claimed by them to have been erroneously exacted.

John Sherman and Cecilia Stewart Sherman, his wife, resided in Ohio and in early childhood, by decree of court, adopted Mrs. McCallum, then by name Kate Rochford, an orphan, whose parents were both deceased, and had her name changed to Mary Stewart Sherman. From the date of this decree, August 21, 1876, this adopted child was treated and cared for by Mr. and Mrs. Sherman in all respects as their daughter, and in Mr. Sherman's will he refers to her as "my daughter," "my daughter Mary," and in a codicil to his will, she having in the meantime married, he speaks of her as "my daughter," and mentions by name her two children, John Sherman McCallum and Cecilia Stewart McCallum.

By the law of Ohio under which the adoption was decreed the probate court which entered the decree was given authority upon the petition of any husband and wife, other requirements being complied with, and upon being satisfied of the fitness and propriety of such adoption, to make an order "declaring that from that date such child to all legal intents and purposes is the child of the petitioner and that its name is changed."

By the Revised Statutes of Ohio, it is further provided (sec. 8140)—

The natural parents shall by such order be divested of all legal rights and obligations in respect to the child, and the child be free from all legal obligations of obedience in respect to them. Such child shall be to all intents and purposes the child and legal heir of the person so adopting him or her, entitled to all the rights and privileges and subject to all the obligations of a child of such person begotten in lawful wedlock.

By virtue of this law of Ohio and of the decree or order of adoption passed under it the plaintiff now claims that for the purposes of the assessment of the succession tax Mrs. McCallum is to be regarded as the lawful child and direct heir of the testator.

If the act of Congress in fixing the rate of tax and classifying those subject to it enumerated child or children there might be ground for the present contention, but that is not the case. There is in the acts of Congress no mention of children nor of parents *eo nomine*. The language describing the first class, in which it is claimed by the plaintiffs that Mrs. McCallum is to be placed is as follows (30 Stat. L., p. 64):

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother or sister to the person who died possessed of such property as aforesaid, the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

Those to be placed in the second, third, and fourth classes are described as descendants of brother or sister, brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, or the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother.

The fifth class, which is the class in which the collector placed Mrs. McCallum, is described as follows:

Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporation, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: *Provided*, That all legacies or property passing by will or by the laws of any State or Territory to husband or wife of the person who died possessed as aforesaid, shall be exempt from tax or duty.

The act then provides that where the amount of property shall exceed $25,000, the rate of tax shall be increased 50 per cent, which in this case makes the $5 per $100 equal $7.50 per $100.

It is to be observed that all the classifications are by blood relationship and that it is the degree of consanguinity to the person who died possessed which regulates the tax, and that all persons more remote in consanguinity than those enumerated, and strangers to the blood, are put in the fifth class.

The only persons admitted to the first class are the lineal issue or lineal ancestor, or brother or sister of the person who died possessed of the property. It seems to me too clear to be disputed that Mrs. McCallum was not the lineal issue of Mr. Sherman, but that she was a stranger in blood to him.

Legislation may give to one who is adopted all the legal rights of a child, but no legislature can make such a one the lineal issue of another if in fact a stranger to his blood.

The demurrer will be sustained.

(T. D. 987.)

Assessments.

A collector is protected in collecting an assessment regular upon its face.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 16, 1906.

SIR: In your letter of the 8th instant, referring to certain cases in which assessment is recommended, you make the following statement, namely:

As there seems to be a doubt, however, as to the legal proof for the substantiation of the special-tax liability in these cases, I would like to be advised of my personal liability in the event that suit for the refund of these taxes (if collected by distraint) should be brought against me.

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You are informed that a collector in collecting taxes assessed is protected by the assessment regular on its face, though it may be invalid. His duty in this respect is purely ministerial, and the assessment is authority to proceed. Harding *v.* Woodcock (137 U. S., 43); Erskine *v.* Hohnback (1871; 14 Wall., 613); Haffin *v.* Mason (15 *ib.*, 671); Philadelphia and Reading Railroad Company *v.* Kenney (18 Int. Rev. Rec., 92; 19 Fed. Cas., No. 11088—rule by which the liability of ministerial officers is to be determined).

An assessment protects the collector though no tax is due. Milan Distilling Company *v.* Tillson (Fed. Cas., No. 9539; 26 Int. Rev. Rec., 5).

Respectfully, JOHN W. YERKES, *Commissioner*

Mr. EDMUND B. ALLEN,
Collector First District, St. Louis, Mo.

(T. D. 988.)

Synopsis of ruling as to peruna and amendation thereof.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 26, 1906.

The appended ruling relative to the preparation known as "peruna" is published for the information of all persons interested.

JOHN W. YERKES, *Commissioner.*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 17, 1906.

SIR: On September 12, 1905, a circular was issued by this office, addressed to collectors of internal revenue, with regard to alcoholic compounds advertised and sold as medicine, composed of distilled spirits or mixtures thereof without the addition of drugs, or medicinal ingredients, in sufficient quantity to change materially the character of the alcoholic liquor. The ruling had especial reference to compounds, or proprietary medicines, where the quantity of drugs in the preparation was so small as to have no appreciable effect on the alcoholic liquor of which the compound was mainly composed, and where compounds were of a character where the ingredients or substances added were not of a character to impart medicinal quality. In that ruling the following language was used:

> But where substances undoubtedly medicinal in their character are combined with whisky or other alcoholic liquor and are used in sufficient quantity to give a medicinal quality to the liquor other than that which it may inherently possess, such compound is, of course, not to be included in this ruling.

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On November 24, 1905, another ruling was issued by this Bureau, including the compounds, or preparations, which as a result of analyses made here showed that they came within the language of the circular of September 12, 1905, above referred to. Peruna was named as one of these preparations. Following that decision, there was correspondence between you and this office relative to the matter, and in a letter of date December 30, 1905, written by you to the Commissioner of Internal Revenue you use this language:

During the last few years since our preparation has had such a large sale, it has come to my knowledge that in some instances its use has been perverted. This has been a matter of much displeasure to me and has done incalculable damage to the real purpose of my medicine as a household remedy. It, however, must be said to the credit of peruna, when its widespread consumption is considered, its misuse has been of very small percentage.

I am a great believer in law and temperance, and thoroughly agree with your established Departmental policy that proprietary medicines should possess such qualities that their perverted use by the public for intemperate purposes would practically be nil.

Your worthy initiative has fortified my resolution to put a cessation to any misuse of my medicine, however small.

I have now added such laxative and medicinal qualities to peruna that I am sure any further misuse of the medicine is practically impossible. I have put this preparation on the market. It can be found in a number of drug stores in Washington, the names of which were furnished you about ten days ago. This new product has a special notice upon the wrapper advising of change in formulary. It also bears upon inside label notice of revision of formulary and label December 1, 1905.

I also take pleasure in inclosing to you the new formulary of peruna as it is now manufactured by me. Also analysis of such product made by Dr. Virgil Coblentz, professor of chemistry in the College of Pharmacy, New York City. I am quite sure this amended formulary will meet and remove the criticism made by your Department on the former product, and I express the hope that this new product may receive your approval at an early date.

Replying to that letter on January 5, 1906, I said in part:

You then state that the new preparation is on the market and can be found in drug stores in Washington, the names of which have been furnished this office. You further inclose to me the formula of peruna as it is now manufactured, and also an analysis of the new product made by Dr. Virgil Coblentz, professor of chemistry in the College of Pharmacy, New York City.

Your desire is that this office examine the product compounded and placed upon the market under the new formula, and see whether or not the change in the compound removes it from the restrictions of prior rulings of this Bureau.

This office will comply with your request—will purchase in the open market the new preparation, examine it and notify you of the result.

Complying with that promise, this office, through its chemist, purchased in open market a bottle of peruna made under the new formula and as now prepared and sold. Analysis was made of this bottle, and compared with previous analyses made of the original peruna as found upon the market and analyzed and made a basis of the ruling placing peruna within the list of alcoholic compounds the sale of which would require the securing from the Government of a

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special-tax stamp as retail liquor dealer. It was found that the preparation as sold now was in accordance with the formula given by you to this office, and that there had been a change in the medicinal strength of the preparation and a small decrease in its alcoholic strength. After this analysis was made by the chemist of this Bureau it was submitted to the honorable Secretary of the Treasury, and by his direction it was submitted to the Surgeon-General of the Public Health and Marine-Hospital Service. On March 15 the Surgeon General, in a communication to the honorable Secretary of the Treasury, and referring to the result of the examination in the laboratory of the Internal-Revenue Bureau of a preparation called "peruna," and another preparation, says:

These letters were transmitted to me with a verbal request for an opinion as to whether the drugs are of a character and in sufficient quantity in the said preparations to preclude the use of these preparations as beverages. The matter was referred to the director of the hygienic laboratory and certain of his assistants, and I concur in their opinion that the preparation called "peruna" contains drugs of such a character and in sufficient quantity to warrant its consideration as a medicine and to inhibit its use generally as a beverage.

By reason of the changes made in the formula under which peruna is now produced and placed upon the market, and by reason of the analyses made in this Bureau and the opinion of the Surgeon-General of the Public Health and Marine-Hospital Service, above quoted, this office is of opinion that peruna when prepared according to the formula now used contains sufficient drugs to render the preparation one beyond the ruling of this office of date September 12, 1905, and therefore persons compounding and selling same will not be required to secure a special-tax stamp, either as rectifiers, wholesale dealers, or retail dealers of spirituous or vinous liquors.

Respectfully, JOHN W. YERKES, *Commissioner.*

Dr. S. B. HARTMAN, *Columbus, Ohio.*

(T. D. 989.)

Offers in compromise.

Caution to revenue officers as to making statements or suggestions in relation thereto.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 26, 1906.

To collectors of internal revenue and internal-revenue agents:

The attention of collectors of internal revenue and internal-revenue agents is again invited to the provision of law (sec. 3229, Rev. Stat.), entitling parties charged with violation of the internal-revenue laws to make offers in compromise. In availing themselves of this provision of the law, parties should be entirely free to offer any sum they may choose to tender in compromise.

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It is regarded as the evident intent of the law that the offer should be an entirely voluntary one on the part of the proponent. Hence it is necessary that revenue officers should carefully refrain from doing anything or saying anything which might be construed by an alleged violator of the law as being a demand or suggestion that any specific sum of money be offered in settlement of a case, or that any offer at all be made.

Attention is called to instructions as to offers in compromise given in the following Treasury decisions, viz: No. 18854, dated January 22, 1898; No. 20265, dated October 28, 1898; No. 206, dated August 30, 1900 (Circular 579); No. 642, dated March 20, 1903; No. 911, dated July 8, 1905.

JOHN W. YERKES, *Commissioner.*

(T. D. 990.)

Distillery bottling warehouses.

Gaining access to contents of a distillery bottling warehouse in the absence of the proper officer punishable under section 3268, Revised Statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 26, 1906.

SIR: Yours of 21st instant is received, stating that you recently instituted proceedings before a United States commissioner under section 3268, Revised Statutes, against certain parties for breaking into a distillery bonded bottling warehouse by prying open the window; that the attorney for the defendants argued that the section was not applicable to the case; that it only applied to the cistern room of the distillery; that the United States commissioner upheld this contention and dismissed the charge. You disagreed with this view and refer the matter for instructions.

In reply, you are advised that in the opinion of this office the United States commissioner was wrong in holding that section 3268, Revised Statutes, does not apply to the facts of the case as reported by you.

Section 3271, Revised Statutes, provides that a distillery warehouse shall be situated on and constitute part of the distillery premises and be under the control of the collector and in charge of an internal-revenue storekeeper.

Section 3274, Revised Statutes, provides that every distillery warehouse shall be in the joint custody of the storekeeper and the proprietor; that it shall be kept securely locked, and shall at no time be unlocked, or opened, or remain open, unless in the presence of such storekeeper.

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The act of March 3, 1897, section 2, provides that regulations of this office may prescribe the mode of separating and securing the additional warehouse, or portion of the distillery warehouse, for the business of bottling spirits in bond. And when such warehouse or portion of warehouse has been provided, the act prescribes that the distiller may remove thereto spirits which have been tax-paid for bottling in "a separate portion of said warehouse which shall be set apart and used exclusively for that purpose."

Regulations, series 7, No. 23, article 3, prescribe the mode of separation of the bottling warehouse from the distillery warehouse. Article 6 provides for examination and approval of the portion set apart. Article 7 provides that such bottling warehouse shall be under the control of the collector and in the joint custody of the storekeeper and the distiller, and that it "shall at no time be unlocked, or opened, or remain open. except in the presence of the storekeeper in charge."

It thus appears that a distillery bottling warehouse is on the distillery premises and constitutes part of the same; that its door is locked with a Government lock and the key in the custody of a Government officer; that it is "a building" strictly within the meaning of section 3268, Revised Statutes, and, therefore, the act of gaining access to its contents in the absence of the proper officer, in whatever manner, is an offense under said section.

Copy of this letter will be sent to United States Attorney Tinsley for his information. If you have evidence of a positive character against the accused individuals you should report the facts and names to the United States attorney and request that he proceed by information or indictment against them.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. SAMUEL J. ROBERTS,
Collector Seventh District, Lexington, Ky.

(T. D. 991.)

Spirits bottled in bond.

Allowances for unavoidable discrepancies, due to slight variation in size of bottles used, permissible where such discrepancies are not excessive.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 28, 1906.

SIR: This office is in receipt of your letter of the 24th instant in reference to the use at the bottling warehouse of the ——— Distilling Company of bottles which, owing to the lack of uniformity in size, do not contain the exact quantity indicated by the stamps placed thereon. From the correspondence submitted it appears th

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in the manufacture of bottles of this class some slight variation in size naturally occurs, and that upon sample tests made by one of the manufacturers interested, the capacity of bottles similar to those furnished was found to vary as follows: Pints (standard 16 ounces), capacity from 15⅝ to 16¾ ounces; fifths (standard 25⅜ ounces), capacity from 25 to 26 ounces; quarts (standard 32 ounces), capacity from 31¾ to 33 ounces.

It also appears from your letter that, in order to adjust differences of this kind, so that each case will contain the required number of gallons, the distiller "weighs the case, bottles, corks, and all, before they are filled, and weighs them after they are filled." This, however, as stated by you, does not insure an equal division of the spirits among the bottles cased; and it is noted that in your letter to the distiller, under date of the 21st instant, you also state that—

> The object of the bottling-in-bond law is to guarantee to every purchaser that the age, proof, and quantity of the goods in a bottle are just exactly as guaranteed in the stamp.

While the Government stamp affixed to each bottle is to a certain extent a guarantee as to quantity as well as to age and proof, *perfect* measurement can not be insured, owing to irregularities in the size (shape) of the bottles and the difficulty of placing in bottles of the same size the same exact quantity of spirits. But as indicated in mimeograph circular of October 6, 1897, the intentional or continued use of undersized bottles will not be countenanced by this office, and will render the spirits so bottled liable to seizure. The circular, however, states:

> It is not overlooked that there may be a slight variation in the capacity of bottles purporting to be, and intended to be, of the same size. But it is believed that such trifling differences will offset each other, and that even a small number of such bottles will hold the aggregate quantity which they were intended to contain.

No scale of allowance in such cases has been prescribed by this office. But, with reference to apparent discrepancies between the quantity reported dumped and the quantity bottled, the circular provides:

> An occasional surplus not exceeding one-half gallon to the barrel, or an occasional deficiency of like quantity, may be tolerated as due, possibly, to some error in gauge, or to the change in volume, owing to variation in temperature. But gain or loss exceeding this quantity requires explanation, and a surplus of 4 quarts or five-fifths to a barrel should be at once reported by the storekeeper or storekeeper-and-gauger to the collector.

Until otherwise directed, the above rule may be adopted in cases where the discrepancy is due to a lack of perfect uniformity in size of bottles used, provided the variation in the size of such bottles does not exceed that shown by the tests above referred to.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. E. T. FRANKS,

Collector Second District, Owensboro, Ky.

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(T. D. 992.)

Bond for release.

When property seized for forfeiture was released on bond under section 3459, Revised Statutes, and judgment entered on the bond without actual notice to surety, *Held* that absence of such notice did not affect the validity of the judgment.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 29, 1906.

The appended decision of the United States circuit court of appeals in United States *v.* Fifty-Nine Thousand Six Hundred and Fifty Cigars is published for the information of all concerned.

JOHN W. YERKES, *Commissioner.*

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

United States, appellee, v. *Fifty-Nine Thousand Six Hundred and Fifty Cigars.*

Before WALLACE, LACOMBE, and TOWNSEND, Circuit Judges.

This is an appeal by Betty Gluck, one of the claimant's sureties on a bond for value, given pursuant to section 3459, United States Revised Statutes, from a summary judgment entered against the surety after verdict rendered in favor of the United States forfeiting the goods. The opinion of the district judge is found in 138 Federal Reporter, 166.

PER CURIAM: The only point raised is that notice of the pendency of the proceedings in court to forfeit the property seized should have been given to the surety by personal service or publication. The only notice given was to the attorney for the claimant.

Appellant relies upon a provision in the section which reads as follows:

In case said bond shall have been executed and the property returned before the seizure thereof by virtue of the process aforesaid, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond by personal service of publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid.

The "process aforesaid" is the process of the court, the "monition" commanding the marshal to attach and detain the property.

The record shows that the provision above quoted is inapplicable. On September 25, 1903, the collector of internal revenue seized the goods under the authority conferred on him by section 3453. On September 26 the bond was executed. On September 29 the information was verified, and on September 30 monition issued to the marshal, who on the same day attached the property which he found in the hands of the collector. Subsequently, on September 30, the claimant applied to the court presenting the bond and asking for delivery of the cigars, "as the same are attached by the marshal." Thereupon the court ordered that they be delivered to the claimant. Had the collector returned them before seizure by the marshal the provision above quoted would have applied, but since it is manifest that they were actually seized by virtue of the monition before they were returned, personal service of notice was unnecessary, the proceeding being *in rem.*

The judgment is affirmed.

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(T. D. 993.)

Summons to produce books.

Collectors have authority to summon persons to appear and produce books.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 6, 1906.

SIR: In your letter of March 23 you make this inquiry:

Will you kindly inform me if a deputy collector of internal revenue, or any revenue agent, has the right to demand the inspection of the books of a municipal dispensary, which show the purchase of whisky by said dispensary and price paid for same, when seeking evidence against distillers who have been selling whisky to said dispensary or other purpose?

In reply, you are advised that any deputy collector or revenue agent has the right to request of the officer in charge of the dispensary the privilege of examining his books for the purpose indicated. If that request is denied, the deputy collector or revenue agent may report the fact to the collector of that district, who is then empowered, under section 3173, Revised Statutes, to issue a summons directing the officer in charge of the dispensary to appear before him with his books of account, showing the transactions as to which information is desired, and disclose such information to the collector. Upon the refusal of the officer in charge of the dispensary to so produce his books and develop the information desired, proceedings may then be had under section 3175, Revised Statutes.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. J. R. GREGORY, *Martinsville, Va.*

(T. D. 994.)

Oleomargarine.

Dealers in oleomargarine who add to or mix with oleomargarine any artificial coloration that causes it to look like butter of any shade of yellow to be reported as manufacturers of oleomargarine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 10, 1906.

SIR: Your letter of March 20, with which you forward copy of a pamphlet issued by ——— manufacturers of oleomargarine at ———, has been received.

This pamphlet refers to the coloring of oleomargarine by dealers for their customers after the sale of the uncolored oleo has been made by the dealer to the customer. It says in part:

The United States law permits the consumer to color butterine for use on his family table, thereby a saving of 9¾ cents per pound. * * * The following method is practiced: The dealer sells the butterine uncolored, which is handed to the purchaser on a piece of parchment paper, who requests that the seller color it. The dealer has

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the butter color in a bottle or cup, and measures the exact amount of color required for the butterine, lays the paper containing the butterine on his marble butter counter, spreads out the butterine with his butter ladle and works it in just as one would handle dough. The purchaser is then returned the identical butterine, yellow and pleasing in appearance. * * * The dealer who will demonstrate how to color will secure a monopoly of the butterine business in his locality. We furnish coloring free with instructions how to use with each purchase. All we ask is that the dealer, in placing his order for butterine, says "send coloring with order."

This office has given very careful attention to this pamphlet by reason of the fact that it is informed that retail dealers in oleomargarine are following the advice given by ———.

The conclusion reached is that the manufacturer incurs no liability by reason of selling this coloring matter or furnishing it free to the retail dealer as ——— propose to do.

The next question to be considered is whether or not the retail dealer, under his special-tax stamp as such, can artificially color this butterine at the request of his customer without subjecting himself to certain provisions of the oleomargarine law.

The law provides, among other things, as follows:

And any person that sells, vends, or furnishes oleomargarine, for the use and consumption of others, except to his own family table without compensation, who shall add to or mix with such oleomargarine any artificial coloration that causes it to look like butter of any shade of yellow shall also be held to be a manufacturer of oleomargarine within the meaning of said Act, and subject to the provisions thereof.

In the case stated the retail dealer sells, vends, and furnishes this oleomargarine to his customer. He then adds to it, or mixes with it, this artificial coloration that causes it to look like butter of a shade of yellow. Therefore each retail dealer, or any other person that sells, vends, or furnishes oleomargarine and artificially colors it will be held to be a manufacturer unless he furnishes it to his own family table without compensation.

The oleomargarine colored according to the directions in this pamphlet is not furnished to the family table of the dealer. It is not colored for use on his family table, but for the use and consumption of one to whom the dealer sells, vends, or furnishes it. This process is a plain, patent, distinct effort to furnish artificially colored oleomargarine, which should pay a tax of 10 cents per pound, at a payment of only one-fourth cent per pound.

The pamphlet further suggests that after the dealer has shown the purchaser a few times how to color the butterine, then the dealer can give the required amount of coloring with each purchase, and the housewife will do the coloring herself.

This office has held, and adheres to that ruling, that under the law a private individual who does not sell or vend oleomargarine can artificially color it himself for uses on his own family table without liability as a manufacturer.

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In view of the above, you will report as manufacturers of oleomargarine, subject to the special tax of $600 per annum, any and all dealers who add to or mix with oleomargarine any artificial coloration that causes it to look like butter of any shade of yellow, and you will also report whether this addition of the artificial coloration is made by the dealer before or after the sale of the oleomargarine.

Other revenue agents and all collectors of internal revenue will be notified of this ruling.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. J. C. P. KINCAID, *Internal Revenue Agent, Boston, Mass.*

(T. D. 995.)

Offers in compromise.

Explanatory of circular letter of March 26, 1906 (T. D. 989).

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 11, 1906.

SIR: In reply to your letter of the 3d instant, you are informed that it is proper for a collector or revenue agent to call the attention of anyone charged with violation of the internal-revenue laws to the section of the statute relative to compromises.

The circular letter of March 26, 1906 (T. D. 989), to which you refer, was directed against the practice of suggesting a certain amount in compromise which the officer indicates he would recommend for acceptance.

If the officer does no more than call the attention of the person charged with violation of the law to the fact that he has the privilege of making an offer in compromise, there is no objection.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. F. W. HOWBERT, *Collector Internal Revenue, Denver, Colo.*

(T. D. 996.)

Use of metal barrels or drums as packages for containing distilled spirits of high proof.

[Circular No. 41—Int. Rev. No. 678.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 11, 1906.

To collectors of internal revenue and others:

Cylindrical metal barrels or drums, having a diameter of not less than 23 inches at the head, may hereafter be utilized, when approved by this office, as packages for containing distilled spirits of high proof.

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A metal package as herein described has been approved.

For the purpose of furnishing the package with a permanent surface, capable of receiving the marks, brands, and stamps required on the stamp head and the gauge marks required on the bung stave, there is superimposed upon one of the metal heads of the package a wooden head not less than an inch thick, consisting of four pieces of oak or other similar wood, of suitable size and shape to completely cover the metal head. These pieces are held in place by a rim or flange about an inch wide, formed by turning over the upper rim of the end hoop of the package, at right angles to its main body. This end hoop is driven on to the package while hot and permanently affixed thereto, with the rim or flange resting firmly against the outer circumference of the wooden head and concealing the outer edge thereof from view. Each of the two middle pieces of the wooden head is further secured to the metal beneath by a bolt passing through the metal and a portion of the thickness of the wood, and secured by a nut countersunk in the wood at or near the middle of the board, both bolts being substantially in line with the diameter of the head of the package drawn at right angles to the joints of the head. The opening in the wood in which each nut is sunk is to be filled flush with the outer surface of the head by a wooden plug or with other suitable material to form a backing to the stamp when affixed as hereinafter described.

In case of a double-stamped package of this type, the warehouse stamp will be affixed over one of these filled openings and the tax-paid (or export) stamp over the other, and the marks and brands required on the head of a barrel will be placed above and to the left of the stamps. The marks and brands required on the bung stave of a wooden barrel will be placed on this package in the vacant space to the right of the stamps, the entry marks being placed opposite the warehouse stamp and the withdrawal marks opposite the tax-paid (or export) stamp.

In case of a single stamped package, the stamp will be placed over the upper bolt; the marks and brands required on the head will be placed to the left of the stamp, and the bung-stave marks, if any, in the vacant space to the right of the stamp.

If other metal packages are hereafter approved, you will be duly notified.

All regulations inconsistent with the foregoing are hereby modified accordingly.

JOHN W. YERKES, *Commissioner.*

Approved:

LESLIE M. SHAW, *Secretary of the Treasury.*

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(T. D. 997.)

Distilled spirits.

Concerning the addition of water to the contents of double-stamped spirits packages without change of stamps; also as to shipments of stamped, marked, and branded packages of spirits concealed in overcasks.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 12, 1906.

SIR: Yours of 5th instant is received, inclosing copy of a circular letter issued by ———. You call attention to the statements therein which are in conflict with the regulations of this office on the following points:

First. Wholesale liquor dealers are assured that they have the right to put as much water as they can in an original two-stamp package of distilled spirits, without the presence of a gauger, and without changing any of the marks and stamps or putting on others.

Second. As to the right to ship spirits in overcasks, Mr. ——— states that the courts have held that if the inner invisible package has the proper stamps, marks, and brands upon it, the package is not subject to seizure.

In reply, I have to say, in regard to the assertion of nonliability for the addition of water to the contents of a double-stamped package, without notice, this office does not hold that any personal liability is incurred. The package is liable to forfeiture, however, under section 3289, Revised Statutes, because, prima facie, the stamps, marks, and brands are not those required for the spirits in the package. They do not describe the contents, after such contents have been changed by the addition of water, and as the purpose of their use is to identify the given body of spirits in the package, it follows that they afford no protection to contents abnormally variant.

An owner of spirits who chooses to tamper with them in a stamped package does so entirely at his own risk. Although this office has, by its regulations, Circulars 536 and 542, endeavored to provide for such reduction in the proof of double-stamped packages as are required by the demands of the trade in such a way as to avoid liability of the package having the proof so reduced, under section 3289, Revised Statutes, some courts have denied the validity of this regulation, holding that it conflicts with section 3455, Revised Statutes. This was the position taken by Judge Amidon in United States *v.* Three Packages of Distilled Spirits (125 Fed. Rep., 52).

It may be that the liability of a package of spirits to forfeiture under section 3289, Revised Statutes, because of the proof and wine gallons being abnormally below the stamped and marked proof, is

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only prima facie, and that if the owner in defending the *in rem* suit proves by credible testimony that the variations were caused by the addition of water only, he will in so doing prove that the stamps, marks, and brands are those required therefor by law, and that his package is not subject to forfeiture. An owner in such case will, however, have no just cause to complain that the Government has proceeded upon the prima facie of the case. By his own act he so changed the contents of the package as that the stamps, marks, and brands no longer identified the contents. In any such case the United States attorney would be requested to ask the court for a certificate of probable cause, and that judgment for the costs be pronounced against the claimant.

In like manner in the case of a shipment of stamped, marked, and branded spirits concealed in an overcask, an internal-revenue officer who had knowledge that a package bearing no visible stamp, mark, or brand contained distilled spirits would be authorized to act upon the *prima facie* of the case so far as seizure is concerned.

Stamps, marks, and brands which are invisible are as though nonexisting.

In any case of seizure under section 3449, Revised Statutes, because of shipment of stamped spirits in an overcask, if it should be demonstrated in the course of the proceedings that the spirits are in fact properly stamped, marked, and branded with the name of the spirits as known to the trade, the forfeiture might fail. In such case, however, the court would be asked for judgment as to costs against the claimant.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. BENJAMIN D. CROCKER,
Collector Internal Revenue, Tacoma, Wash.

(T. D. 998.)

Distillers' bonds.

Discretionary power of collectors as to the approval of distillers' bonds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 24, 1906.

SIR: Yours of 19th instant is received, asking whether a collector may properly refuse to approve the bond of a grain distiller when he is convinced by the facts and circumstances of the case that the person giving the notice and executing the bond is not the real party in interest.

You state that the question has frequently arisen, and that while it is clear that a collector may withhold his approval in cases where

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the situation of the distillery is such as to facilitate fraud upon the Government, or where the distiller has been convicted of fraud, or has compromised his liability therefor, it is not clear, in your opinion, that the collector has discretion in a case such as first above referred to. You explain as to that case that the party giving the notice is now the distiller of record, and proposes to bond again for the coming year. He is not known to possess means sufficient to carry on such a business. His brother has means, and apparently manages everything about the distillery, purchases the material, and sells the product, though it is probably done in the name of the ostensible distiller. The brother, not the distiller, is known in the community as the proprietor, and speaks of the distillery as being his own and of the business as being his own. You are morally certain that he is the real proprietor and that he uses his brother's name to shield himself from punishment for violations of law committed at the distillery.

In reply to your inquiry, you are advised that such facts and circumstances as you have mentioned in the case referred to are deemed by this office to bring the case within the spirit and letter of section 3260, Revised Statutes, amended, which should be construed in connection with section 3163, Revised Statutes, amended, imposing upon collectors the duty of seeing generally that all laws and regulations relating to internal revenue are faithfully executed and complied with; and also with section 3262, Revised Statutes, amended, which provides that no bond of a distiller shall be approved unless he is the owner, etc.

The discretion of the collector to refuse approval is not limited to a bond offered for the future operation of a distillery. The statute gives him the discretion, not only when the physical situation of the distillery is such as to enable the distiller to defraud the United States, but he may even during the period covered by a bond which has been approved require a new one upon the occurrence of "any other contingency" that, in his opinion, makes it necessary for the protection of the Government. The fact coming to his knowledge that the notice and current bond of a distiller had not been given by the true distiller would be such a contingency as would justify his requiring a new bond to be given by the real distiller.

A collector would not, of course, be authorized to act upon a mere suspicion that a false notice and bond had been given. On the other hand, he would not be doing his duty by the Government if he failed to act upon facts and circumstances sufficient to convince him that the true distiller had not given notice and bond.

The element of personal liability of the distiller to punishment for the fraudulent operation of the distillery is the most effective instrument in the hands of the Government to insure itself against fraud;

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and the collector is the official who is chiefly depended upon to see that the proper person is made subject to such punishment.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. EDWARD C. DUNCAN,
Collector Fourth District, Raleigh, N. C.

(T. D. 999.)

Alcoholic compounds.

Persons selling Hostetter's Bitters prepared under the new formula are not required to secure special-tax stamp, the new compound having been analyzed and found to be unfit for use as a beverage.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 14, 1906.

GENTLEMEN: In the circular issued by this office last December, you were notified that Hostetter's Bitters was included among the preparations and compounds covered by regulation issued by this office on September 12, 1905, relative to alcoholic compounds advertised and sold as medicines.

On December 21 you submitted to this office samples of a preparation to be called "Hostetter's Bitters," in which the amount of drugs had been increased, and also submitted the formula under which this new preparation was made.

After a careful analysis made in the chemical laboratory of this Bureau, it was determined that while the new preparation perhaps contained drugs of a character and in sufficient quantity to warrant its consideration by some as a medicine, on the other hand the preparation could still be used to some extent as a beverage. Thereupon, you furnished this office with still another preparation, known as "Hostetter's Bitters," in which the amount of drugs in quantity and character was changed and, furthermore, ipecac was added. A careful analysis of this new compound has been made, and as it is now unfit for use as a beverage and carries enough ipecac and other ingredients to prevent its use as a beverage, you are informed that this present preparation is exempt from special-tax liability, and that persons handling it are not compelled to take out special-tax stamp from the Government.

As you know, this office will occasionally purchase in the open market samples of compounds such as this, and examine them for the purpose of seeing whether or not there is absolute adherence by the proprietors to the formulæ under which these preparations are made, according to the statements filed in this office.

Respectfully, JOHN W. YERKES, *Commissioner.*

THE HOSTETTER COMPANY, *Pittsburg, Pa.*

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(T. D. 1000.)

Defective bonds.

The proper course to take in the case of bonds in which alterations and erasures occur.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 25, 1906.

SIR: Referring to your letter of the 19th instant, you are advised that all bonds accepted by you in which alterations and erasures occur should have placed upon them the statement, by the affidavit of the surety company or by the certificate of the officer before whom the acknowledgments were taken, that such alterations or erasures were made prior to the signing of the bond; or, if they were made after the bond was signed, the formal consent of all the parties thereto should be written in the bond.

You may send the defective bonds by registered mail to your deputy, who should present them in person to the proper officer for correction.

It is desired that all bonds should be in as perfect a form as possible in order that no question may arise concerning them should they be placed in suit.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. JOSEPH E. LEE, *Collector Internal Revenue, Jacksonville, Fla.*

(T. D. 1001.)

Custom-house brokers selling imported liquors.

While custom-house brokers do not become involved in liability under the internal-revenue laws for making entry and paying duty on imported foreign distilled spirits at the custom-house, under oath that the shipment is consigned to them and that they are the owners, when, in fact, they are merely brokers acting for the real owners, yet if they sell these liquors they involve themselves in special-tax liability.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 25, 1906.

SIR: Your letter of the 18th instant has been received, submitting the question of the special-tax liability as wholesale liquor dealers of custom-house brokers who, you say, "when making entry of an import and paying duty on foreign distilled spirits at the custom-house * * * state under oath that the shipment is consigned to them and that * * * they are the owners of such liquors, although, as a matter of fact, they are the mere custom-house brokers acting for the real owner."

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There is no special-tax liability on the custom-house brokers by reason merely of making the oath to which you refer and entry at the custom-house and paying duty on these imported distilled spirits; but if they have sold these distilled spirits, even as agents at any place where the requisite special-tax stamp was not held either by them or by their principal, they have involved themselves in special-tax liability.

In the case of the express companies, the United States circuit court of appeals, eighth circuit, construing the fifth paragraph of section 3244, Revised Statutes, said:

The actual ownership of the property is not essential to fix upon the trafficker the quality of a dealer in liquors under this statute. TREASURY DECISIONS, January 11 1906 (pp. 32, 33, and 34, No. 965).

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. B. D. CROCKER,
Collector Internal Revenue, Tacoma, Wash.

(T. D. 1002.)

Storage of leaf tobacco.

Concerning storage of leaf tobacco in cellars of buildings occupied by cigar manufacturers under certain restrictions.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 25, 1906.

SIR: This office is in receipt of your letter of the 23d instant with reference to manufacturers of cigars using the cellar of the building in which the factory is located for the purpose of storing their leaf tobacco, and you ask in cases where the cellar is under the same building and included in Form 36½ in the opening papers, and also in Form 41½, Certificate of Registry, whether it will be necessary in each case to obtain the consent of the Commissioner and the further written assent of the sureties on the bond before such storage could be allowed.

In reply, you are advised that where the cellar is included and covered by the bond as a part of the factory premises, and is described on Forms 36½ and 41½ as under the same building, and to be used only for the storing of leaf tobacco, it is believed no serious harm could result therefrom, and it may be permitted without making special application to this office for the privilege of outside storage, as provided for in T. D. 20480, issued January 3, 1899. This will apply only to dwellings or buildings occupied wholly by the cigar manufacturer, or so arranged that the tobacco will not pass through premises controlled by other people.

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In all cases where the tobacco is to be stored in cellars or in places separated from the building in which the factory is located by public streets or thoroughfares, application should be made for outside storage as provided for in the Treasury decision referred to.

This ruling is made to cover the large number of cases of small manufacturers whose factories are located in their dwellings, and who lack the room and the facilities for storing their surplus leaf and keeping it in proper working condition.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. G. T. DAVIS, *Collector Twelfth District, Scranton, Pa.*

(T. D. 1003.)

Special tax—Buffet in a lodge.

Where a lodge buys and owns liquors, and issues coupon books to members, on presentation of which they obtain liquors at the buffet, the coupon books being charged to the members and their dues being increased or diminished, it is held that the liquors are sold by the lodge to its members, and that it must hold a special-tax stamp as a retail liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 26, 1906.

GENTLEMEN: Your letter of the 28th ultimo to the Attorney-General has been referred to this office, wherein you submit the question of the special-tax liability, as a retail liquor dealer under the internal-revenue laws of the United States, of ———, a fraternal and benevolent organization, in the event of their establishing in their club rooms a buffet for the distribution of liquors to their members in the manner which you describe as follows:

The lodge will buy the liquors and own them, and the secretary will issue small coupon books to each member, which will be charged to him, and his dues increased or diminished accordingly. On presentation of the coupons at the buffet, he can get such liquors as he desires. No money will exchange hands; no bar will be maintained, simply a buffet. Only members of the organization can obtain coupons or liquors. The buffet is to be maintained only as a convenience, and not for the purpose of revenue.

It is held by this office that the sale of these coupon books by the lodge to its members, on presentation of which at the buffet they are entitled to receive such liquors as are called for by them, constitutes a sale of the liquors by the lodge, and so involves it in special-tax liability as a retail liquor dealer, and this liability is not affected by the fact stated that "the buffet is to be maintained only as a convenience, and not for the purpose of revenue."

The long-settled ruling of this office has been sustained by the United States courts that any course of selling, though to a restricted class of persons and without a view to profit, is within the meaning of the statute imposing special tax.

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In United States *v.* Giller (54 Fed. Rep., 656) the court held that a benevolent association selling tickets at a picnic good for bread, meat, or beer became involved in special-tax liability under the internal-revenue laws as a retail dealer in malt liquor.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

To ——— ———.

(T. D. 1004.)

Warehouse bonds.

Effect of filing a new bond.—When prior bond is relieved from liability.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 26, 1906.

SIR: In your letter of the 24th instant you ask whether the giving of a new warehousing bond, upon the request of the collector or the Commissioner, relieves the prior bond of future liability.

From the reference you make to article 17, series 7, No. 5, I take it that you refer to a warehouse bond instead of a warehousing bond. If that be true, you are advised that when the collector or the Commissioner of Internal Revenue demands a new warehouse bond from the warehouseman, the filing and acceptance of the new bond so required relieves the prior bond of all liability for acts and conditions subsequent to the date of the new bond. Any new bond given, however, by a warehouseman without demand therefor having been made by the collector or the Commissioner of Internal Revenue is held to be merely cumulative, and both bonds are liable.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. ——— ———.

(T. D. 1005.)

Brewers filing Form 27c after having ceased business as brewers.

The practice on the part of certain brewers of filing notice, Form 27*c*, on the 1st of July, although they had ceased the business of brewing and given notice that they did not intend to reengage therein until a later period, is objectionable and should be discontinued. Such notice is not required of brewers until they are ready to begin business and give bond and pay special tax as brewers. Meantime stamps may be sold to them for the beer on hand manufactured when they were qualified brewers, although they are no longer such brewers, and this tax-paid beer may be sold by them under special-tax stamps as wholesale and retail malt liquor dealers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 16, 1906.

SIR: It is found upon the records of this office that ——— have continued from year to year the objectionable practice of filing notice

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as brewers, Form 27*c*, on the 1st of July, although they had ceased the business of brewing, and filed notice that they did not intend to reengage in this business until a later period.

As you were advised by letter from this office, dated September 22, 1900, Form 27*c* is not required of these brewers until they are ready to begin the business of brewing, and they are not to be regarded as having qualified as brewers until they have paid the special tax. You will please inform them accordingly, in order that they may discontinue the practice of giving notice as brewers at a time when they are not required to give bond and pay special tax as brewers.

Under the long-settled ruling, you are authorized to sell tax stamps to ——— on and after July 1 in each year for beer manufactured by them prior to that date and at a time when they were qualified brewers. Although no longer under bond and special-tax stamp as brewers, they are nevertheless the brewers of the beer previously manufactured by them, within the meaning and intent of the statute, and it is not necessary for them, being no longer engaged in brewing, to give notice as brewers in order to obtain the requisite tax stamps for their beer remaining on hand.

The special-tax stamps taken out by them as malt liquor dealers are sufficient to cover their sales of this beer after payment of tax thereon.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. F. VON BAUMBACH,
Collector Internal Revenue, St. Paul, Minn.

(T. D. 1006.)

Reimportation of domestic distilled spirits.

Distilled spirits bottled in bond, below proof, for export, are subject, on reimportation, to a duty equal to the internal-revenue tax as originally levied on the proof gallon.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 19, 1906.

SIR: This office is in receipt of your letter of the 16th instant requesting that you be advised respecting the following inquiry received from Messrs. S. J. Greenbaum, distillers in your district:

In case we bottle whisky in bond for export at 90 per cent proof and ship same to a foreign country, and it becomes necessary for us to have that whisky returned to this country, could we dispose of it again in this country by paying the tax based on the 90 per cent proof? * * *

Section 27 of the tariff act of July 24, 1897, provides—

That upon the reimportation of articles once exported, of the growth, product, or manufacture of the United States, upon which no internal tax has been paid, or upon which such tax has been refunded by allowance of drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal revenue laws upon such articles. * * *

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Section 48 of the act of August 28, 1894, imposes on distilled spirits a tax of $1.10 "on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallons," except fractional gallons less than one-tenth.

Section 2 of the bottling act of March 3, 1897, however, provides—

> That distillers may * * * whenever necessary reduce such spirits as are withdrawn for bottling purposes by the addition of pure water only to one hundred per centum proof for spirits for domestic use, or to not less than eighty per centum for export purposes.

While the tax on distilled spirits, when produced, is imposed on the wine gallon, if below proof, the tax so levied is obviously not for the purpose of raising additional revenue from this class of spirits, but to discourage the production and warehousing of spirits below the standard proof adopted as a basis for computing the tax due. Such being the evident purpose of this provision of the law, and in view of the express authority conferred by the bottling act for the reduction below proof of spirits bottled for export, I am clearly of the opinion that the tax on such spirits should be recomputed on the same basis as computed when the spirits were originally gauged, namely, on their proof strength.

This is the basis adopted in determining the tax liability of both the distiller and the party bonding the spirits for export, and is the basis for collecting the tax on the spirits, under the provisions of section 5 of the bottling act, in case of loss in transit, or where on reinspection at the port of export the cases containing the spirits are found to have been tampered with.

The tax on such bottled spirits so computed under the internal-revenue laws will therefore determine the amount of duty to be paid on the reimportation of the spirits under the provisions of section 27 of the tariff act of July 24, 1897.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. SAMUEL J. ROBERTS,
Collector Seventh District, Lexington, Ky.

(T. D. 1007.)

Retailing liquors on small boats.

Where a merely nominal charge is made for passengers on a boat, and the facts ascertained by the collector are sufficient to show that the actual business of the boat, instead of being that of carrying passengers, is the retailing of alcoholic liquors, a special-tax stamp is not permitted to be issued for such boat.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 22, 1906.

SIR: Your letter of the 15th instant has been received, relating to the small boat ——— plying on the Ohio River at Portsmouth, and

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whose owners hold a special-tax stamp as retail liquor dealers thereon, claiming that they are doing "a legitimate passenger business."

You transmit, however, a letter from the mayor of the city of Portsmouth, dated the 11th instant, wherein he says:

The boat is a small affair and is in no regular trade, and is not operated during week. While its proprietor claims to charge a small fee as a passenger charge, there can be no question but that the entire object of the running of this boat is to evade the laws of Ohio regulating the selling of liquor. Its patrons are of the lowest class and much disorder follows their Sunday violations.

If you find (notwithstanding the views expressed by your deputy in his letter of the 14th instant which accompanies yours, that this boat, "carrying passengers for hire," comes within the definition given a passenger boat by the Steamboat Inspection Service) that the price charged to persons on this boat is merely nominal and that its actual business, instead of being that of carrying passengers, is the retailing of alcoholic liquors, you may inform the owners of this boat that it is not to be regarded as "engaged in the business of carrying passengers" within the meaning of the joint resolution of Congress, May 8, 1876 (Comp. of Int. Rev. Laws, 1900, p. 114), and, therefore, a special-tax stamp can not be issued to them for the retailing of liquors on this boat for the year beginning July 1, 1906.

You may take a like action with reference to other small boats, to which you refer, upon the same state of facts.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. DAVID H. MOORE,
Collector Eleventh District, Athens, Ohio.

(T. D. 1008.)

Special-tax stamp—Partnership.

The firm name is the only name that is necessary in a special-tax stamp issued to a partnership.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 2, 1906.

SIR: In reply to your letter of inquiry of the 29th ultimo, you are hereby advised that where two or more persons form a partnership to engage in business as retail liquor dealers, and their sworn return, Form 11, discloses the names of all these persons and their places of residence, it is not necessary, in the issuance of the special-tax stamp, to insert their names. The firm name is sufficient therein.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. E. B. STEPHENSON,
Collector Internal Revenue, Omaha, Nebr.

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(T. D. 1009.)

Explanation of internal-revenue regulations concerning "adulterated butter," as described by the act of Congress approved May 9, 1902.

"Creamery butter," "ladled butter," "whey butter," and "sweet butter" classed as "adulterated butter" and taxable at 10 cents per pound when made to contain moisture to the extent of 16 per cent or more.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 6, 1906.

GENTLEMEN: Your letter of April 24, 1906, was duly received, and reply thereto has been delayed in order that the matters therein referred to might receive careful consideration, with a view of furnishing you with full information relative to the questions propounded by you, it being apparent from the nature of your inquiries that the regulations of this Department relating to taxable butter are not clearly understood.

You refer to the nature of your business as that of buying and selling what is commonly denominated "packing stock—that is, butter purchased from merchants which comes in barrels and boxes composed of various churnings of various farmers scattered throughout the country from which such stock is drawn."

You sell this as packing stock to the renovated butter factories. You rehandle and rework it, making what is termed by the trade "ladle butter." You state that the butter as purchased from merchants made up from many churnings contains, in many instances, more than 16 per cent of water; sometimes more, sometimes less. You ask to be informed whether the sale of such butter containing 16 per cent or more of moisture creates liability as wholesale dealer in adulterated butter when sold in quantities.

You further inquire as to the liability of the merchants who sell you this butter, and also as to the status as regards special and other taxes of the farmers who furnish the merchants butter containing water in excess of the legal limit.

Concisely stated, your questions are, What is the legal status under rulings and regulations of this office of the merchant handling (buying and selling) this class of goods, the farmer making and selling the same, and the manufacturer buying and converting it into ladle butter or selling it as packing stock?

It is presumed that you are and have been in possession of the regulations of this office, approved by the Secretary of the Treasury, known as regulations No. 9, revised December, 1904, and if this is true, your attention has doubtless been particularly attracted to the parts relating to renovated and adulterated butter which contain

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matters necessarily of vital importance to persons or corporations engaged in the business of handling an article the nature of which may or may not be classed as a taxable product under the Federal laws.

In the regulations mentioned the law describing taxable butter (sec. 4, act of May 9, 1902) is printed in part on page 101, and this is followed by a carefully prepared statement under various heads embracing the views of this office relative to the question as to when or under what conditions ordinary butter of commerce may become liable to the tax imposed on adulterated butter under the act referred to.

It may be noted that the statutory definition of "butter" as set forth in the aforesaid section 4, makes no reference to the degree of moisture that may be contained in such butter, but the question is at once involved in the definition of adulterated butter immediately following, so that butter defined in the oleomargarine act of August 2, 1886, becomes adulterated butter when it is found to have been so treated as to bring it within the definition set forth in the act of May 9, 1902, either by the addition of chemicals, any substance foreign to butter, to cheapen the product, or when manipulated or manufactured by any process or the addition of any material with intent or effect of causing the absorption of abnormal quantities of water, milk, or cream.

It is well understood that butter produced on the farm is often loaded with water, but it will be seen by reference to the regulations these small individual lots are not taken into account in connection with the taxing question, but when these lots are gathered up and manufactured or manipulated so that they lose their identity as the farmer's product they enter a sphere where surveillance of the law becomes operative, and some of the more common kinds of resulting new products are referred to under the heads of "ladle butter," "creamery butter," "whey butter," and "sweet butter," with the information as to when such may be classed as taxable.

It is an indisputable proposition that butter containing abnormal moisture is adulterated butter, and is subject to a tax of 10 cents per pound which is required by law to be paid by the manufacturer.

Being a taxable product it must be packed, branded, and have tax-paid stamps affixed to the packages when found off the premises of the manufacturer; otherwise it is in an unlawful condition and is forfeitable the same as other taxable articles which may be found on the market untaxpaid.

It has been the uniform custom of this office ever since this law went into effect to caution creameries, ladlers, and other handlers of butter, either for sale or for storage stock, to see to it that the product sold by them should not infringe on the law by being permitted to contain water in excess of the limit fixed in the regulations.

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It has been held that butter in cold storage for sale at future time containing moisture to the extent of 16 per cent or more is adulterated butter illegally on the market, the tax imposed by law not having been paid and other requirements not having been complied with. Seizures have been made of this class of butter, the same sold or otherwise disposed of, and the manufacturers and dealers charged with the special taxes.

Had the regulations been followed, much if not all of this trouble would have been avoided. It is incumbent on handlers of butter to see that the product leaving their hands is such as to bear the scrutiny of officers charged with the collection of all internal-revenue taxes imposed by the law.

If the material accumulated and manipulated by them is not right it is important that it be made right before being sent out on the market. They are the judges of the class of materials they will accept, and can refuse that which they find it dangerous to use in producing the article proposed to be marketed. If the moisture content is kept below 16 per cent it is not in danger from interference on the part of the internal-revenue officers unless there are other questions involved than that of the moisture limit.

If, however, the water content is 16 per cent or above it is over the line of immunity from tax, and is necessarily likely to fall under the scrutiny of the officers of this Bureau.

It may be said in general terms that the law taxing adulterated butter will be enforced. Special taxes incurred by manufacturers and dealers will be exacted, and a tax of 10 cents per pound will be imposed on the product. It is not intended to invoke the special penalties provided by law when no intent to defraud the Government is apparent, but may be in cases of persistent continuance of the unlawful practices.

The foregoing, taken in connection with the regulations to which reference has been made, will doubtless afford you the information you seek.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ———.

(T. D. 1010.)

Distilled spirits.

Destruction of bonded spirits while undergoing an artificial aging process.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 11, 1906.

To collectors of internal revenue and others concerned:

The appended decision of the Secretary of the Treasury respecting applications for abatement under section 3221, Revised Statutes, of

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tax on bonded spirits destroyed while undergoing an artificial aging process, is published for the information of collectors of internal revenue and others concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

TREASURY DEPARTMENT, *June 8, 1906.*

SIR: With your letter of the 6th instant you submitted the claim of ——— for the abatement, under section 3221, Revised Statutes, of ——— tax on ——— gallons of spirits alleged to have been lost by casualty, February 24, 1906, while in the distillery warehouse.

It appears that, while a package of whisky was undergoing an artificial aging process, it exploded with great force, striking and bursting another package of spirits some distance away, causing the loss of the contents of both packages.

As the artificial aging process is not a necessary incident to the care of spirits in warehouse, but is undertaken by the distiller voluntarily, for his own benefit, it must be done at his own risk, and the loss of the spirits due to such process can not be held to be an unavoidable casualty within the meaning of the statute. The claim is accordingly rejected.

Respectfully, LESLIE M. SHAW, *Secretary.*

The COMMISSIONER OF INTERNAL REVENUE.

(T. D. 1011.)

Alcohol in the arts.

Act of Congress June 7, 1906.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1906.

To collectors of internal revenue:

The appended act of Congress, approved June 7, 1906, is published for the information of all concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

AN ACT For the withdrawal from bond, tax free, of domestic alcohol when rendered unfit for beverage or liquid medicinal uses by mixture with suitable denaturing materials.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after January first, nineteen hundred and seven, domestic alcohol of such degree of proof as may be prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury, may be withdrawn from bond without the payment of internal-revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; such denaturing to be done upon the application of any registered distillery in denaturing bonded warehouses specially designated or set apart for denaturing purposes only, and under conditions prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

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The character and quantity of the said denaturing material and the conditions upon which said alcohol may be withdrawn free of tax shall be prescribed by the Commissioner of Internal Revenue, who shall, with the approval of the Secretary of the Treasury, make all necessary regulations for carrying into effect the provisions of this Act.

Distillers, manufacturers, dealers and all other persons furnishing, handling or using alcohol withdrawn from bond under the provisions of this Act shall keep such books and records, execute such bonds and render such returns as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require. Such books and records shall be open at all times to the inspection of any internal-revenue officer or agent.

SEC. 2. That any person who withdraws alcohol free of tax under the provisions of this Act and regulations made in pursuance thereof, and who removes or conceals same, or is concerned in removing, depositing or concealing same for the purpose of preventing the same from being denatured under governmental supervision, and any person who uses alcohol withdrawn from bond under the provisions of section one of this Act for manufacturing any beverage or liquid medicinal preparation, or knowingly sells any beverage or liquid medicinal preparation made in whole or in part from such alcohol, or knowingly violates any of the provisions of this Act, or who shall recover or attempt to recover by redistillation or by any other process or means, any alcohol rendered unfit for beverage or liquid medicinal purposes under the provisions of this Act, or who knowingly uses, sells, conceals, or otherwise disposes of alcohol so recovered or redistilled, shall on conviction of each offense be fined not more than five thousand dollars, or be imprisoned not more than five years, or both, and shall, in addition, forfeit to the United States all personal property used in connection with his business, together with the buildings and lots or parcels of ground constituting the premises on which said unlawful acts are performed or permitted to be performed; *Provided*, That manufacturers employing processes in which alcohol, used free of tax under the provisions of this Act, is expressed or evaporated from the articles manufactured, shall be permitted to recover such alcohol and to have such alcohol restored to a condition suitable solely for reuse in manufacturing processes under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

SEC. 3. That for the employment of such additional force of chemists, internal-revenue agents, inspectors, deputy collectors, clerks, laborers, and other assistants as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may deem proper and necessary to the prompt and efficient operation and enforcement of this law, and for the purchase of locks, seals, weighing beams, gauging instruments, and for all necessary expenses incident to the proper execution of this law, the sum of two hundred and fifty thousand dollars, or so much thereof as may be required, is hereby appropriated out of any money in the Treasury not otherwise appropriated, said appropriation to be immediately available.

For a period of two years from and after the passage of this Act the force authorized by this section of this Act shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and without compliance with the conditions prescribed by the Act entitled "An Act to regulate and improve the civil service," approved January sixteenth, eighteen hundred and eighty-three, and amendments thereof, and with such compensation as the Commissioner of Internal Revenue may fix, with the approval of the Secretary of the Treasury.

SEC. 4. That the Secretary of the Treasury shall make full report to Congress at its next session of all appointments made under the provisions of this Act, and the compensation paid thereunder, and of all regulations prescribed under the provisions hereof, and shall further report what, if any, additional legislation is necessary, in his opinion, to fully safeguard the revenue and to secure a proper enforcement of this Act.

Approved, June 7, 1906.

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(T. D. 1012.)

Fortification of wines.

Act of Congress June 7, 1906.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1906.

To collectors of internal revenue:

The appended act of Congress, approved June 7, 1906, is published for the information of all concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

AN ACT To amend existing laws relating to the fortification of pure sweet wines.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-three of the Act entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes," approved October first, eighteen hundred and ninety, as amended by section sixty-eight of the Act of August twenty-seventh, eighteen hundred and ninety-four, be further amended so as to read as follows:

"SEC. 43. That the wine spirits mentioned in section forty-two of this Act is the product resulting from the distillation of fermented grape juice, to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof, and shall be held to include the product from grapes or their residues, commonly known as grape brandy; and the pure sweet wine, which may be fortified free of tax, as provided in said section, is fermented grape juice only, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, except as herein expressly provided; and such sweet wine shall contain not less than four per centum of saccharine matter, which saccharine strength may be determined by testing with Balling's saccharometer or must scale, such sweet wine, after the evaporation of the spirits contained therein, and restoring the sample tested to original volume by addition of water; *Provided,* That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar or pure anhydrous sugar to the pure grape juice aforesaid, or the fermented product of such grape juice prior to the fortification provided by this Act for the sole purpose of perfecting sweet wines according to commercial standard, or the addition of water in such quantities only as may be necessary in the mechanical operation of grape conveyors, crushers, and pipes leading to fermenting tanks, shall not be excluded by the definition of pure sweet wine aforesaid; *Provided, however,* That the cane or beet sugar, or pure anhydrous sugar, or water, so used shall not in either case be in excess of ten per centum of the weight of the wine to be fortified under this Act; *And provided further,* That the addition of water herein authorized shall be under such regulations and limitations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act where the same, after fermentation and before fortification, have an alcoholic strength of less than five per centum of their volume."

SEC. 2. That section forty-nine of the said Act, approved October first, eighteen hundred and ninety, be amended so as to read as follows:

"SEC. 49. That wine spirits used in fortifying wines may be recovered from such wine only on the premises of a duly authorized grape-brandy distiller; and for the

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purpose of such recovery wine so fortified may be received as material on the premises of such a distiller, on a special permit of the collector of internal revenue in whose district the distillery is located; and the distiller will be held to pay the tax on a product from such wines as will include both the alcoholic strength therein produced by the fermentation of the grape juice and that obtained from the added distilled spirits, subject, however, to the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, as amended by section six of the Act entitled 'An Act to amend the laws relating to internal revenue,' approved March first, eighteen hundred and seventy-nine; and such spirits so recovered may be used by such distiller to fortify wines as authorized by section forty-two of the aforesaid Act, approved October first, eighteen hundred and ninety."

SEC. 3. That the Commissioner of Internal Revenue is hereby authorized to assign at each winery where wines are to be fortified such number of gaugers or storekeeper gaugers, in the capacity of gaugers, for special duties as may be necessary for the proper supervision of the making and fortifying of such wines, and the compensation of such officers shall not exceed five dollars per diem while so assigned, together with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner of Internal Revenue, but not to exceed two dollars per day for said board bills; and to cover the expenses to the Government attending the making and fortification of such sweet wines there shall be levied and assessed against each maker of such wines, and collected monthly, a charge of three cents on each taxable gallon of brandy used by him in the fortification of such wines during the preceding month. That bonds hereafter given under the provisions of the aforesaid Act of October first, eighteen hundred and ninety, as amended, shall be conditioned for the payment of the tax on all brandy removed thereunder and not used and accounted for within the time and in the manner required by law and regulations, and for the payment of all charges herein imposed on the brandy so withdrawn and used; and the said bonds shall contain such other conditions as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

SEC. 4. That where brandy to be used in the fortification of wine is distilled on premises adjacent to the winery premises the Commissioner of Internal Revenue may, in his discretion, authorize the erection on either of said premises of fermenting vats for material to be used either in the manufacture of such wines or the brandy to be used in the fortification thereof; and all such materials used or received on either of said premises shall be under the supervision of the officer assigned to such winery, and shall be accounted for at such times and in such manner as the Commissioner may direct.

SEC. 5. That the provisions of sections thirty-two hundred and twenty-one and thirty-two hundred and twenty-three of the Revised Statutes of the United States, as amended by an Act approved March first, eighteen hundred and seventy-nine, are hereby extended to grape brandy withdrawn for use in the fortification of sweet wines, and which, prior to such use, is accidentally destroyed by fire or other casualty while stored in the fortifying room on the winery premises.

SEC. 6. That any person who by any process recovers from wines fortified under the provisions of the aforesaid Act approved October first, eighteen hundred and ninety, or amendments thereto, any brandy or wine spirits used in the manufacture or fortification of said wine, otherwise than is provided for in said Act and its amendments, or who shall rectify, mix, or compound with other distilled spirits such fortified wines or grape brandy or wine spirits unlawfully recovered therefrom, shall, on conviction, be punished for each such offense by a fine of not less than two hundred dollars nor more than one thousand dollars. But the provisions of this section, and the provisions of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, shall not be held to apply to the blending

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of pure sweet wines fortified under the provisions of the said Act of October first, eighteen hundred and ninety, or amendments thereto, where such wines are blended for the sole purpose of perfecting the same according to commercial standard.

Approved, June 7, 1906.

(T. D. 1013.)

Renovated butter and oleomargarine.

Renovated butter and oleomargarine removed from stamped packages for display or convenience of retail dealers, in advance of sales, to remain in or on the original stamped packages until sold and delivered to purchasers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1906.

GENTLEMEN: Your two letters dated the 8th instant have been received, which refer to removal of contents of packages of renovated butter and oleomargarine for the purpose of display in or on the stamped package, or for immediate delivery to customers, and you desire to be informed whether the retail packages thus prepared in advance of sale must be stamped or the wrapper marked as required for retail packages.

The regulations of the Secretary of Agriculture as contained in rule 24, page 125, regulations No. 9, authorize dealers in renovated butter to prepare for convenience of customers not more than one day in advance of sales small parcels or packages marked for identification in accordance with regulations, provided such retail packages remained in or stacked upon or in contact with the manufacturer's package originally containing the same until such contents have been bargained for and sold. It is held that retail dealers should not keep renovated butter for sale in any form completely separated from and independent of the manufacturer's stamped package. The same is true of oleomargarine.

This concession was made with the understanding that the original package was not necessarily to be entirely emptied and a portion of the contents only were to be removed, but to be kept in contact with the original stamped packages from which taken. The emptying of a package and returning the contents entire was not what was in mind when this regulation was made.

It will be noted that these display packages are to be marked for identification while outside of the stamped package, and naturally it must be presumed that these marks were to be the words "renovated butter" and the usual marks required on retail packages of oleomargarine.

It would therefore appear that when these packages are left out of the original package they are to be marked either by printing the words on the wrapper or impressing them into the butter itself for renovated butter. The regulations would not justify the removal

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of the entire contents of a stamped package of renovated butter or oleomargarine to be put in wood fiber or other container to be returned to the original stamped package. When a package bearing a tax-paid stamp is emptied the law requires that the stamp shall be destroyed.

The regulations relative to controlling the manner of sales by retail dealers of renovated butter have been sustained by the courts, and they should be carefully followed in order that complications may be avoided.

The conditions in regard to oleo are practically the same as with renovated butter so far as a display outside of the stamped package is concerned. The law and the regulations require the retail dealer to mark each retail package in a certain manner fully set forth in regulations No. 9. These marks are to be placed on the retail packages at time of sale. It should be borne in mind that oleomargarine can not be removed from the original packages in advance of sale and put up in fiber packages, crocks, or other containers separated from the stamped packages. Some dealers have incurred loss of property and heavy penalties for engaging in this practice. It is resorted to usually for the purpose of getting rid of the marks required by law and offering an opportunity to dispose of the oleomargarine unlawfully as butter. Oleomargarine found in this shape unprotected by the stamp is clearly liable to forfeiture, and should be seized by any revenue officer discovering it.

Dealers in oleomargarine or renovated butter should familiarize themselves with the law and regulations under which they are operating, and if their business is conducted strictly in accordance therewith they will escape the heavy penalties imposed by the law on persons found violating the same.

Respectfully, J. C. WHEELER, *Deputy Commissioner.*

Messrs. ———.

(T. D. 1014.)

Special tax—Retail liquor dealer compounding spirits.

Where a retail liquor dealer draws from a stamped package less than 5 gallons of spirits, and adds to it sirup and keeps it in a container for his own convenience in meeting orders of his customers, and does not put it up in bottles and keep it in stock for sale, he is not required to pay special tax therefor as a rectifier.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 19, 1906.

SIR: In letters addressed to this office on the 12th and 16th instant by ——— ———, he submits the following question:

Is a retail liquor dealer liable for a special tax as a rectifier if he puts up rock and rye, using 3 gallons of rye whisky drawn from a stamped package and 1 gallon of sirup, using no other ingredients, and keeps same in a container for his own convenience to supply his customers when they call for it?

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He has to-day been referred to you, and you may inform him that a retail liquor dealer upon these facts, is not required to pay special tax as a rectifier. Where such a dealer draws from a stamped package of whisky any quantity less than 5 gallons and compounds it by the addition of rock-candy sirup, and keeps it in a container for his own convenience in meeting the orders of his customers at his bar, not putting the compound liquor in bottles or other packages for sale, he is not to be regarded as keeping it in stock for sale in advance of orders, and is therefore not to be called on to pay special tax as a rectifier therefor.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. JAMES D. GILL, *Collector Third District, Boston, Mass.*

(T. D. 1015.)

Coupons attached to "dummy" cigarette packages.

It is not illegal to attach coupons or other advertising matter to "dummy" cigarette packages which do not contain the stamp, caution notice, or factory brand.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 21, 1906.

SIR: This office is in receipt of your letter of the 20th instant, in which you refer to a letter recently addressed to Collector Eidman, third district, New York, prohibiting the ——— Company, dealers in manufactured tobacco products, from attaching to statutory packages of cigarettes, put up by different manufacturers, certain coupons issued and redeemable by said company, and asking whether it would be a violation of any internal-revenue law if the said company attaches the coupons to dummy packages used for show-window display which have never contained any cigarettes, and which bear no stamp, caution notice, or any other mark or brand purporting to show that any provisions of the internal-revenue laws have been complied with.

In reply, you are advised that the office has ruled (see T. D. 814) that dummy cigar (or cigarette) boxes which have never contained a taxable product, and which have not affixed thereto the stamp or caution notice, and are not branded or marked in any way to show that some provision of the internal-revenue law has been complied with with respect to such boxes, do not come within the provisions of section 3397, Revised Statutes, defining what shall constitute statutory packages. Therefore, while they are objectionable, the office lacks the legal authority to prohibit their use.

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It being conceded, therefore, that these dummy packages in the condition described do not come within the notice of the internal-revenue laws, the office holds that the attaching of coupons or other advertising matter to such packages, whether of such character as is authorized by the law or regulations or not, would not be illegal or subject to interference by revenue officers, except that they would have the right to examine all such packages in order to satisfy themselves that they do not conceal contraband taxable tobacco products.

The use of dummy boxes or cartons for cigars or cigarettes which have on them the caution notice, or any of the marks or brands required by law to be placed on statutory packages, is prohibited by section 3455, Revised Statutes, as fully explained in T. D. 873.

Respectfully, J. W. YERKES, *Commissioner.*

Mr. ——— ———.

(T. D. 1016.)

Interest on judgments.

Where the State law provides that interest accrues only when so specified in the judgment, the same rule applies to a judgment in the Federal court.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 22, 1906.

SIR: Yours of 14th instant is received, referring to correspondence with this office concerning the judgment in the case of United States *v.* Theurer & Adams for $6,000 and costs, rendered April 4, 1868.

You state that the various parties in interest manifest a disposition to settle the judgment, and the question arises as to whether it bears interest, though by its terms it does not call for interest.

You refer to section 966, Revised Statutes, and express the opinion that the judgment does not bear interest. You state that it is settled in several decisions of the supreme court of Louisiana that a judgment would not bear interest if it had been rendered in a State court, because it does not call for any. You cite several decisions including that in Hagerman *v.* Moran (75 Fed. Rep., 97).

In reply to your inquiry, you are advised that the authorities seem to concur that a judgment recovered in a Federal court follows the State law. Hence if the State law provides that interest shall accrue upon a judgment only when so specified in the judgment, and if in the case referred to by you no interest was specified, then it would seem that interest can not be claimed or demanded by the United States in said case.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. W. W. HOWE, *United States Attorney, New Orleans, La.*

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(T. D. 1017.)

Interest on judgments.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 23, 1906.

To United States attorneys:

As the courts have held that judgments at common law do not carry interest, and also that interest upon judgments is allowable only according to the law of the State where recovered (under sec. 966, Rev. Stat.), it is important that in States where interest is not part of the judgment unless specifically expressed therein care should be taken by United States attorneys to ask that the decree or judgment of the court in internal-revenue cases shall include interest with the principal and costs.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(T. D. 1018.)

Furnishing certified copies of certain records—Act of June 21, 1906.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 25, 1906.

To collectors of internal revenue:

The appended act of Congress, approved June 21, 1906, is published for the information of all concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

AN ACT To amend the internal-revenue laws so as to provide for furnishing certified copies of certain records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter three of the Revised Statutes of the United States be, and hereby is, amended in section thirty-two hundred and forty, so as to read:

"SEC. 3240. Each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality he shall furnish a certified copy thereof, as of a public record, for which a fee of one dollar for each one hundred words or fraction thereof in the copy or copies so requested may be charged."

Approved, June 21, 1906.

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(T. D. 1019.)

Apothecaries' exemption under section 3246, Revised Statutes.

The exemption from special tax granted druggists for use of spirits or wine by section 3246, Revised Statutes, relates only to medicines in which the spirits or wine used have been changed in nature and made clearly medicinal by the addition of drugs.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 26, 1906.

SIR: In reply to the question submitted in your letter of the 23d instant, at the instance of Messrs. ———, druggists, you will please inform them that they can not sell alcohol or any alcoholic liquor that has not been compounded into a medicine by the addition of drugs, even though they sell the alcohol upon a physician's prescription and for medicinal use only, without liability.

Under the long-settled ruling, the exemption from special tax granted to druggists for the use of distilled spirits or wine in the preparation or making up of their medicines relates only to medicines in which the spirits or wine used have been changed in nature and made clearly medicinal by the addition of drugs. See section 3246, Revised Statutes of the United States.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. ——— ———.

(T. D. 1020.)

Fees for furnishing certified copies.

Collectors required to deposit in the Treasury fees for furnishing certified copies of Form 10 to prosecuting officers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 29, 1906.

To collectors of internal revenue:

Section 3240, Revised Statutes, as amended by the act of June 21, 1906, provides—

That each collector of internal revenue shall, under regulations of the Commissioner of Internal Revenue, place and keep conspicuously in his office, for public inspection, an alphabetical list of the names of all persons who shall have paid special taxes within his district, and shall state thereon the time, place and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality he shall furnish a certified copy thereof, as of a public record, for which a fee of one dollar for each one hundred words or fraction thereof in the copy or copies so requested may be charged.

Applications of prosecuting officers should be made in writing, and collectors will collect the fee according to the provisions of the above section, issuing a receipt therefor on Form 1, and will deposit the same to the credit of the Treasurer of the United States, and report such action on Form 58.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

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(T. D. 1021.)

Manufacturer of stills—Notice and permit.

The notice and permit provided for in section 3265, Revised Statutes, relate only to a manufacturer of a still or distilling apparatus that is to be used for distilling the spirits defined by section 3248, Revised Statutes; but section 3258, Revised Statutes, applies to every still set up, whether for distilling these spirits or for any other purpose.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 30, 1906.

SIR: Your letter of the 22d instant has been received, inquiring whether, if a manufacturer of stills delivers to a firm a still of 25-gallon capacity for the purpose of redistilling benzine and gasoline and this purpose is disclosed in an affidavit, he is required to give the notice in writing to the collector and to obtain the permit provided for by section 3265, Revised Statutes; and if he fails to do so, whether he is liable to the penalty and forfeiture denounced in that section.

The reply of this office is in the negative. Section 3265, Revised Statutes, relates to a still or distilling apparatus that is to be used for the purpose of distilling spirits contemplated by the internal-revenue laws and defined by section 3248, Revised Statutes.

It is held that it does not apply therefore to the case which you submit; but section 3258, Revised Statutes, applies to the setting up of the still in question, or of any still or distilling apparatus, it matters not whether it is to be used for the distillation of spirits or for some other purpose.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. GEO. W. LIEBERTH, *Collector Sixth District, Covington, Ky.*

(T. D. 1022.)

Porto Rico.

Sale of internal-revenue stamps in Porto Rico—Act of June 28, 1906.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 3, 1906.

To collectors of internal revenue:

The appended act of Congress, approved June 29, 1906, is published for the information of all concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

AN ACT To provide means for the sale of internal-revenue stamps in the island of Porto Rico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all United States internal-revenue taxes now

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imposed by law on articles of Porto Rican manufacture coming into the United States for consumption or sale may hereafter be paid by affixing to such articles before shipment thereof a proper United States internal-revenue stamp denoting such payment, and for the purpose of carrying into effect the provisions of this Act the Secretary of the Treasury is authorized to grant to such collector of internal-revenue as may be recommended by the Commissioner of Internal Revenue, and approved by the Secretary, an allowance for the salary and expenses of a deputy collector of internal revenue, to be stationed at San Juan, Porto Rico, and the appointment of this deputy to be approved by the Secretary.

The collector will place in the hands of such deputy all stamps necessary for the payment of the proper tax on articles produced in Porto Rico and shipped to the United States, and the said deputy, upon proper payment made for said stamps, shall issue them to manufacturers in Porto Rico. All such stamps so issued or transferred to said deputy collector shall be charged to the collector and be accounted for by him as in the case of other tax-paid stamps.

The deputy collector assigned to this duty shall perform such other work in connection with the inspection and stamping of such articles, and shall make such returns as the Commissioner of Internal Revenue may, by regulations approved by the Secretary of the Treasury, direct, and all provisions of existing law relative to the appointment, duties, and compensation of deputy collectors of internal revenue, including office rent and other necessary expenses, shall, so far as applicable, apply to the deputy collector of internal revenue assigned to duty under the provisions of this Act.

SEC. 2. That before entering upon the duties of his office such deputy collector shall execute a bond, payable to the collector of internal revenue appointing him, in such amount and with such sureties as he may determine.

Approved, June 29, 1906.

(T. D. 1023.)

Playing cards—Division of pack into two parts.

Where a pack of 52 cards is divided into two parts, each containing 26 cards, it is not a compliance with the statute to place a 1-cent stamp on each of these parts. Each is to be regarded as a pack on which the 2-cent stamp is required.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 2, 1906.

SIR: Your letter of the 27th ultimo has been received, inquiring whether you can "divide the ordinary pack of 52 cards in two parts, making 26 cards in each part, and place a 1-cent stamp on each part of 26 cards," or whether you would "be obliged to place a 2-cent stamp on each one of the parts of 26 cards."

My reply is that on each of these parts or packs containing 26 cards a 2-cent stamp must be affixed. The statute, section 38, act of August 28, 1894, provides for the payment of "a tax of two cents for and upon every pack of playing cards containing not more than fifty-four cards." It matters not, therefore, how many cards less than 54 the pack contains. The 2-cent stamp is required on every such pack.

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Under the long-settled ruling any number of cards in a deck above 54 and not exceeding another 54 must be regarded for the purposes of this act as belonging to another pack, upon which an additional tax of 2 cents must be paid.

Respectfully, ROBT. WILLIAMS, Jr.,
Mr. ——— ———. *Acting Commissioner.*

(T. D. 1024.)

Alcohol denatured for use in the arts—Limitations.

Domestic alcohol to be denatured under the provisions of the act of Congress approved June 7, 1906, for use in the arts and industries, will be such only as is produced at regularly established distilleries.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 10, 1906.

SIR: Replying to your letter of the 6th instant, in which you state that you wish "to get in touch with the alcohol situation," and in which you ask to be informed as to the practical operation of the denatured alcohol bill, I will state that the regulations authorized by the act of June 7, 1906 (the denatured alcohol law) are now being prepared. They will not be ready for general distribution until about October 1, 1906.

You state that you "do not understand this bill allows anyone to make alcohol, but that it must be made in the usual fashion—in some way come into Government control. Doubtless the same regulations as now in reference to its manufacture are to prevail, but the Government, when it is released from bond, instead of collecting the tax, is to denaturize it."

You are correct in your view as to the law. There has been no change in the law relating to the manner in which alcohol can be manufactured. Persons who desire to manufacture distilled spirits for any purpose must comply with all of the provisions of the law relating to the setting up of distilleries and the operation of same.

The distillery must be constructed in the manner now prescribed by the law and the regulations. The usual distiller's bond must be given; the distillery must be surveyed by a duly authorized officer; a distillery warehouse must be established; a storekeeper-gauger or a storekeeper and a gauger must be assigned to duty at the distillery; the product must be entered in distillery bonded warehouse, and, in fact, all of the provisions of the law relating to the setting up and the operation of registered distilleries, the manufacture of distilled spirits at such distilleries, and the depositing of such spirits in distillery bonded warehouse must be complied with.

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The new law simply provides that alcohol, of such proof as may be determined, may be withdrawn free of tax provided it is denatured after it is so withdrawn in such manner that it can not be used as a beverage or in the manufacture of liquid medicinal preparations.

The conditions under which such alcohol may be withdrawn, denatured, and put upon the market are to be prescribed by regulations by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. ——— ———.

(T. D. 1025.)

Denatured alcohol.

Materials from which alcohol for denaturing and withdrawal free from internal-revenue tax may be produced.—Method of production and distilleries where alcohol suitable for denaturing purposes may be manufactured.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 13, 1906.

GENTLEMEN: I am in receipt of your letter of the 12th instant, in which you state that there are large quantities of fruit and vegetable parings at the various packing houses which you think can be used to manufacture commercial alcohol under the denatured-alcohol law, and state you would like to know if it will be necessary to have a separate plant from your fruit brandy distillery at which to manufacture alcohol under said law.

In reply, you are advised that under the provisions of section 3255, Revised Statutes of the United States, as amended, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may exempt distillers of brandy made exclusively from apples, peaches, grapes, pears, pineapples, oranges, apricots, berries, prunes, figs, or cherries from any provision of the law relating to the operation of distilleries, except as to the tax on the spirits produced at such distillery.

Under the authority conferred by this statute regulations have been adopted exempting distilleries using the fruits mentioned above from the provisions of all of sections 3262, 3263, 3267, 3269, 3271, 3273, 3275, 3279, 3284, 3285, 3294, 3302, 3310, 3318, and parts of sections 3259, 3266, 3303, 3305, 3307, 3364, 3287, 3293, 3295, 3244, 3309, 3311, and 3318*a* of the Revised Statutes of the United States.

Brandy distilleries are now operated under these regulations.

You state that you wish to use pineapple parings, tomato parings, pea hulls, banana parings, sugar-corn cobs, and other refuse from canning establishments in the manufacture of alcohol for denaturing purposes.

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With the exception of pineapple parings none of the several varieties of materials mentioned by you can now be used in the manufacture of distilled spirits at a distillery set up and operated under the law and regulations relating to fruit brandy distilleries.

A distillery at which tomato parings, pea hulls, banana parings, sugar-corn cobs, etc., could be used in the manufacture of distilled spirits, must be constructed and operated under the general law. Such distillery must be constructed and operated under the law and regulations under which grain and molasses distilleries are now constructed and operated.

It is possible that your brandy distillery could be remodeled and certain additions made to it, such as a cistern room, warehouses, etc. If this could be done there would be no objection to using it as a fruit brandy distillery during the fruit season, and as a distillery for the manufacture of alcohol for denaturing purposes during the rest of the year.

You will understand, of course, that the law relating to the construction and operation of distilleries has not been changed.

The denatured-alcohol law simply provides that alcohol manufactured in the usual manner at registered distilleries may be withdrawn from bond free of tax for denaturing purposes, and may be put upon the market after it has been so denatured that it can not be used as a beverage or in the manufacture of liquid medicinal preparations.

In the construction of a distillery at which it is intended to produce alcohol for denaturing purposes, regulations No. 7, issued by this Department, will apply.

The regulations authorized by the denatured-alcohol law are now being prepared, and they will be ready for general distribution about October 1, 1906. These regulations will relate to the manner of withdrawing alcohol free of tax for denaturing purposes, the denaturing of same, and the putting of it upon the market.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Messrs. ——— ———.

(T. D. 1026.)

Leaf tobacco.

Dealers in leaf tobacco or manufacturers of tobacco or cigars may sell leaf tobacco (unmanufactured) without payment of tax to the Department of Agriculture for use of the Government in making comparative and experimental tests, upon permits Form 100 to be issued by the collector.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 18, 1906.

To collectors of internal revenue:

The question having been submitted to this office as to the right of the Department of Agriculture to purchase, free of tax, from

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manufacturers of tobacco or cigars, or from qualified dealers in leaf tobacco, unmanufactured leaf tobacco for the use of said Department in making comparative tests of the different types of commercial varieties of tobacco and for experimental purposes, the office holds that, notwithstanding the restrictions placed by law upon the sale of leaf tobacco by subsection 6 of section 3244, Revised Statutes, and section 69, act approved August 28, 1894, the privilege given by section 3464, Revised Statutes, of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, which privilege is also extended to all articles of domestic production which are subject to tax, is deemed sufficient authority for permitting manufacturers of tobacco or cigars or dealers in leaf tobacco to sell to the Department of Agriculture, without payment of tax, such quantities of leaf tobacco as may be required for the purposes above mentioned.

In order that the tobacco so purchased may be properly traced, and that manufacturers or dealers in leaf tobacco may be given specific authority to sell and obtain credit in their accounts for the tobacco sold, it has been arranged that application will first be made by the Secretary of Agriculture to this office specifying the kind and quantity of tobacco he wishes to purchase, and the name and address of the manufacturer or dealer from whom the purchase is to be made, upon receipt of which instructions will be issued to the collector of the district in which the dealer or manufacturer is located authorizing the sale.

Upon receipt of such instructions the collector will issue a permit on Form 100 to the manufacturer or dealer in leaf tobacco covering the transaction, and such permit will be authority for the sale and such credits as may be necessary in the manufacturer's or dealer's accounts.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

(T. D. 1027.)

Relative to granting relief to special-tax payers where special-tax stamps have been accidentally lost or destroyed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 20, 1906.

To collectors of internal revenue:

Section 3239, Revised Statutes, provides that—

Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, except tobacco peddlers, shall place and keep conspicuously in his establishment or place of business all stamps denoting the payment of said special tax.

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Form 38½, application by taxpayers for issue of special-tax stamps in lieu of others destroyed, has been provided by this office and furnished to collectors since 1879, and has also been adapted and used in cases where special-tax stamps have been lost.

This office has received from some districts continuously, from time to time, applications on Form 38½ for relief of special-tax payers, while many districts make no such applications at all.

It is obvious that casualties must occur to special-tax stamps in all districts, and it has been ascertained that certificates of payment of tax are issued to taxpayers by collectors in some districts contrary to the present custom of this office. The issuance of such certificates by collectors or their deputies, without special authority having been first procured in each case from this office, is hereby directed to be discontinued.

Hereafter all certificates of payment of special taxes to be displayed in places of business in lieu of special-tax stamps lost or destroyed, will, after the allowance of applications on Form 38½, be prepared and issued from this office to collectors for signature and delivery to applicants, and each certificate will be countersigned by the Commissioner of Internal Revenue.

Where a special-tax stamp is alleged to have been lost in the mail Form 38½ must, whenever possible, be accompanied by a sworn statement from the proper employee, to the effect that the stamp was regularly and properly issued by him in due course of business.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(T. D. 1028.)

Accounts current—Uniformity of blanks.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 20, 1906.

To collectors of internal revenue:

You are advised that, in order to establish, as far as practicable, uniformity in the various forms of blanks used by disbursing officers as accounts current and to confine the various appropriations from which moneys are advanced to one account, the inclosed Form No. 44, revised and approved by the Comptroller of the Treasury June 9, 1906, will go into effect from and after July 1, 1906, superseding Forms 44 and 44½ described and explained in regulations No. 2, revised, pages 53 and 57.

In order to comply with the requirements of section 12, act of July 31, 1894, accounts on this form for the first and second months in a quarter must be mailed to the Commissioner of Internal Revenue within ten days after the close of each month, and that for third or last month within twenty days after the close of the quarter.

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The accounts for the first and second months will be accompanied by schedules, Forms 63, 56, and 469, and vouchers, Forms 63½, 378, 107, and 150, covering payments actually made to deputies, clerks, storekeepers, storekeeper-gaugers, and gaugers within the month for which the account is rendered. If this can not be done, the unpaid bills will be submitted as vouchers to the next account.

It will be observed under this requirement that if the warrant for July is not received until August the account for July will be blank as to credits and debits, and the warrant and vouchers for services in July will be paid and taken up in the account for August. If such a delay should occur in a subsequent month of the same fiscal year the credit or debit balance from the previous account should be brought forward, the differences per Auditor's settlement received since last account was rendered noted, and the account so forwarded, treating the warrant and payments therefrom in account for the following month.

The new appropriation for "Miscellaneous Expenses, Internal-Revenue Service," is provided to pay for office rent, fuel, lights, telephone, and miscellaneous expenses defined in Regulations No. 2, revised, pages 59 to 66; consequently all vouchers for expenditures thereunder must be scheduled on Form 85 and submitted, if practicable, with the account for the last month in the quarter, and the amount advanced monthly carried forward in the account as a balance due the United States. If it is found necessary, however, to make monthly payments, the account must be accompanied by Form 85 and vouchers.

The account for the third or last month in the quarter will also be accompanied by the forms of schedules and vouchers referred to in the third paragraph on first page of this circular, embracing payments made within the third or last month.

The revision of Form 44 has made it necessary to also revise Forms 42, 56, 63, 85, and 469, and in the meantime, or until the revised forms are printed and issued, it will be necessary to use the old ones, the only marked difference, however, being that Forms 56 and 469, from July 1, will be sworn to by the collector, and for this purpose the form of oath to Form 63 should be pasted to the right-hand side of the two forms, the words "deputy collector" and "clerk" erased, and the words "storekeeper and storekeeper-gauger" and "gauger," respectively, inserted.

The personal salary of the collector for the month, as shown by Salary Tables, should be debited on line 5 and the amount entered in column 1.

Office Record No. 56 will eventually be revised, but in the meantime the present record can be changed to meet existing emergencies.

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The special attention of collectors is invited to the fact that under the plan outlined herein, disbursing accounts are to be forwarded from this office to the Auditor monthly, and it therefore becomes necessary that said accounts and vouchers be promptly transmitted to this office, and that they be correct in every detail so that return for any cause may be avoided. Section 12, act of July 31, 1894, provides that no advances shall be made to collectors acting as disbursing agents when reports are delinquent, and failure to render accurately prepared disbursing accounts promptly is likely to cause delay in the issue of the monthly disbursing warrant.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

(T. D. 1029.)

Fortification of pure sweet wine.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 21, 1906.

To collectors of internal revenue:

Section 3 of the act approved June 7, 1906, amending the law relating to the fortification of pure sweet wine, confers authority upon the Commissioner of Internal Revenue to assign to each winery where wines are to be fortified such gaugers, or storekeeper-gaugers in the capacity of gaugers, as may be necessary for the proper supervision of the making and fortifying of such wines.

To enable this office to carry out the provisions of this part of the act, collectors will, at as early a time as practicable, forward a list of the wineries in their respective districts the manner of operations at which will require the assignment of officers to the wineries, in addition to the gaugers whose duties are the supervision of fortification of wines and the work of gauging at the distilleries connected with the wineries.

The officer designated for duty at the winery will be expected to carefully oversee the use of water by the wine maker, and prevent such use in excess of the quantity fixed by the law. He will also carefully observe the workings at the winery to see that no unlawful practices are resorted to in the manufacture of sweet wine intended for fortification. These officers will also be expected to render any necessary assistance to the gaugers in charge of fortification, and to deputy collectors, or other examining officers who visit the wineries and distilleries. Their duties will be defined by the collector at the time of their assignment to duty. In case any irregularity is discovered by the officers assigned to the wineries, the same must be promptly reported to the collector or proper deputy collector.

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Collectors are expected to assign gaugers and supervising officers of wineries with due regard for economy, and not have a larger number under assignment than the requirements of the Service demand.

Attention is invited to the fact that the act of June 7, 1906, authorizes the payment of board bills of officers assigned to wineries under that act, in an amount to be fixed by the Commissioner, but not to exceed $2 per day for such board bills. This class of officers will therefore be permitted to include in their expense accounts such amounts as are actually paid out by them for board during the time they are under assignment and away from their homes, but in no case will any charge for board in excess of $2 per day be allowed.

It is the opinion of this office that board should be obtained by these officers at places other than with the wine makers or distillers whenever practicable, thereby avoiding possible criticism.

The assignments of gaugers and supervising officers at wineries will be changed every thirty days. In making chances of assignments care should be exercised to avoid unnecessary expense.

Owing to the near approach of the wine season, collectors are requested to give this matter early attention.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

(T. D. 1030.)

Tax on distilled spirits seized for fraud and sold under forfeiture—Tax-paid stamps of no value in hands of others than distiller.

In the case of the seizure of distilled spirits on account of fraud on the part of the distiller, not only the spirits but the tax paid thereon are forfeited to the Government, even though the tax-paid stamps have not been affixed to the packages.—The decision of Judge Platt in the case of United States *v.* The United States Fidelity and Guaranty Company (T. D. 975), cited and approved, which holds that when the property has disappeared under forfeiture and the taxes remain unpaid, the sureties are responsible.—A person other than a distiller who pays the tax upon spirits in warehouse and who holds the tax-paid stamps therefor has no action against the Government for the recovery of the money so paid when the spirits for which the stamps were procured are forfeited to the Government. He must look to the distiller for reimbursement, as the distiller is the only one whom the Government recognizes in the payment of tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 25, 1906.

To collectors of internal revenue and others concerned:

Herewith is appended the decision of the United States circuit court of appeals, fourth circuit, which is published for the information of all concerned.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

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UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.—No. 653.

H. S. Harkins and J. F. Reynolds, plaintiffs in error, v. *George W. Williard, defendant in error.*

In error to the Circuit Court of the United States for the Western District of North Carolina, at Greensboro.

[Decided July 10, 1906.]

Before GOFF and PRITCHARD, Circuit Judges, and WADDILL, District Judge.

PRITCHARD, *Circuit Judge:* This case arose from the seizure by H. S. Harkins, collector of internal revenue, fifth district of North Carolina, on March 10, 1902, of three packages of spirits as forfeited to the United States for violation of the internal-revenue laws, at grain distillery No. 651, of C. S. Pitts, Winston-Salem, N. C. Tax on these spirits, amounting to $127.16, was paid March 10, 1902, but spirits were seized same day before attachment of stamps. Seizure was made for violations discovered March 4, 1902. Defendant in error, Williard, loaned distiller Pitts the tax money, purchased the stamps himself, but they were issued in the name of Pitts, the distiller, and was to have spirits when withdrawn in payment of a debt owed by Pitts. Pitts died in July, 1902, intestate and no administrator was ever appointed. Unattached stamps remained in the hands of Williard, and in January, 1903, he made application to the Commissioner of Internal Revenue for their redemption, which application was rejected for several reasons, the principal one of which was that Williard was not a proper party in interest. Suit was then brought in the State court and removed to the circuit court of the United States, at Greensboro, and at April term, 1905, a judgment for $127.16 with interest was obtained.

Upon the foregoing facts the court below charged the jury, among other things, as follows:

1. It appears in this case, from undisputed evidence, that $127.16 was paid by Mr. Williard to the defendants. As this was Mr. Williard's money, he is the real party in interest, and is entitled to maintain the action.
2. In no view of the case was it right or lawful to receive money from Mr. Williard in payment of the taxes due on property already forfeited. The Government had no right to receive this money after the forfeiture of the property.

It is contended by the appellant that the court erred in submitting these instructions to the jury, and that the same were not warranted by the law governing this case.

In order to correctly determine the merits of this controversy, it is necessary to decide whether the plaintiff below had the right to institute an action against the collector of internal revenue for money which he had paid for the distiller Pitts as tax due the Government on certain casks of spirits.

Prior to 1894 the law in relation to taxes on distilled spirits was as follows: "That the distiller, owner, or person having possession" of the spirits could pay the tax on the same. On that date, however (28 Stat. at L., 509), the law was amended so as to read—

That the tax herein imposed shall be paid by the distiller of the spirits on or before their removal from the distillery or place of storage, except in case of removal therefrom without payment of tax as provided by law.

The statute as amended clearly limits the payment of tax and the receipt of the stamps therefor to the distiller and makes no provision which authorizes the recognition of any other person for that purpose.

The stamps that were issued to the distiller were only evidence of the fact that the tax had been paid, and inasmuch as the spirits had passed into the possession of the Government as forfeited property, the fact that they were not attached to the casks can have no bearing upon the questions involved herein.

Where taxes are paid and stamps are attached to casks of spirits in case of forfeiture, both stamps and tax (for which stamps are receipts) are forfeited.

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Section 3384 of the Revised Statutes, which relates to this subject, reads as follows:

All distilled spirits forfeited to the United States, sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon. And any distilled spirits heretofore condemned, and now in the possession of the United States, shall be sold as herein provided. If any tax-paid stamps are affixed to any cask or package so condemned, such stamps shall be obliterated and destroyed by the collector or marshal after forfeiture, and before such sale.

Thus it will be seen that the law provides for the forfeiture of the stamps as well as the property and requires the destruction of the stamps which were originally attached thereto as evidence of the payment of the tax. It also requires the purchaser at the sale to pay the taxes and affix stamps thereto in order to authorize the removal of the spirits. If the taxes are paid at the time of forfeiture, then the Government has no further claim against the distiller for taxes, but the proceeds of sale of property thus forfeited to the Government on account of violations of the internal-revenue laws belongs exclusively to the Government and can not be applied to the payment of tax. For instance, forfeited spirits, tax paid or otherwise, in case of forfeiture and sale belong to the Government, and even though there should be an excess arising from such sale if the tax on the property forfeited has not been paid, the distiller and the sureties are liable for the tax.

In the case of United States *v.* The United States Fidelity and Guaranty Company (not yet reported) Judge Platt held that the proceeds of forfeited spirits could not be applied to the payment of taxes thereon; that if taxes are paid both spirits and taxes are forfeited, and the sureties on the distiller's bond were liable for all taxes aside from the forfeiture. The court said:

If the distiller had paid the taxes, the liquor would have been forfeited tax and all. The property has disappeared under the forfeiture but the taxes remain unpaid, and the sureties are responsible.

It is not thought that the lien upon the property can be said to continue upon the proceeds after the property has been forfeited and sold.

Primarily the distiller is liable for the taxes due on the spirits distilled and, in case of default, his sureties are also jointly liable for the same; nevertheless, in that event the tax must be paid in the name of the distiller, and the stamp, which is in the nature of a receipt, can only be issued to him.

In pursuance of the provision of law in regard to the payment of taxes by the distiller, the defendant in error paid the tax in question on the 10th day of March, 1902, but before the stamps were attached to the packages by the gauger, as required by law, all of the casks of spirits were seized on account of violations of the internal-revenue laws which had been discovered on the 4th day of March, 1902. The payment of the tax under these circumstances by the defendant in error was as much the act of the distiller as if he had in person handed the money to the collector. This is true because the law provides that only the distiller shall have the right to pay the tax on distilled spirits. Therefore, when the defendant in error paid the tax he acted as the agent of the distiller and the fact that the receipts for the amount paid were issued in the name of the distiller clearly negatives the contention that the defendant in error had any lawful claim to the same.

A careful reading of the debates in Congress at the time the amendment of August 28, 1894, was under consideration shows that it was the purpose of Congress to limit the payment of taxes exclusively to the distiller in order to avoid multiplicity of claimants in case of controversy between the Government and the distiller as to the payment of taxes. After a thorough consideration of the matter, it was deemed best to limit the payment of taxes to the distiller alone and by doing so the right to contest the payment of taxes which might be deemed to be improper is reserved to the distiller only; while, on the other hand, the statute renders it impossible for claimants other than the distiller to present their claims before the Commissioner of Internal Revenue, thus eliminating the consideration of questions which were never intended to be settled by that official.

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Congress has wisely provided that where a controversy shall arise as to the payment of taxes that only the distiller shall have the right to apply to the Commissioner of Internal Revenue for a settlement of the same, and if there are claimants other than the distiller the controversies as to their rights must be settled in the proper forum in the same manner as the title to property is usually determined between individuals.

Distilled spirits are liable to forfeiture on account of the acts of the distiller, even though the tax upon the same may have been paid in full. In this instance it appears that the premises of the distiller, together with all the spirits and other property therein, were forfeited to the Government on account of the misconduct of the distiller and the packages claimed by the defendant in error were seized on account of such violations and forfeited to the Government while in the possession of the distiller Pitts.

Therefore, even though the stamps had been attached to the casks upon which the tax was paid, they would have been forfeited to the Government as completely as though no stamps had been attached thereto and the tax had not been paid by any one. Under such circumstances, the distiller Pitts, or his personal representative, could have, upon a proper showing, asked the Government to refund any amount shown to have been improperly paid; but this is a right which the distiller and his personal representative possess, and no one else is permitted by law to institute proceedings on this account before the Commissioner of Internal Revenue. The claim of the defendant in error is to the effect that some time prior to the seizure of the distillery the distiller Pitts become indebted to him in a certain sum and agreed to sell to him certain packages of unstamped whisky which were then in the distillery warehouse in the possession of the Government. He does not undertake to say that the possession of the whisky was delivered to him in pursuance of an agreement made with the distiller, and if he were to make such a contention it would be untenable because the spirits were in the possession of the Government, subject to a lien that was paramount to all other liens, and the distiller was powerless to make any delivery of the spirits held by the Government until he had paid the tax and the same had been duly stamped and marked by the gauger and delivered to him. To hold otherwise would be to render uncertain the security of the Government for its taxes and to defeat the very purpose of the internal-revenue laws, to wit, the collection of taxes due upon distilled spirits manufactured under the supervision and control of the Government.

The distiller undoubtedly had the right to contract for the sale of the spirits while in the warehouse, but he could only do so subject to the lien of the Government for its taxes, and for penalties incurred and fines imposed for violations of the internal-revenue laws; but it is admitted that this property was forfeited to the Government before the stamps had been attached to the casks in question, and, therefore, the defendant in error did not possess the right to enforce his claim against the property at the time of the seizure, and this of itself is sufficient to show that the claim which he now seeks to enforce is unfounded.

Tax-paid spirit stamps, as they are technically called, are nothing more than receipts authorized to be issued by the Government to indicate the payment of taxes on distilled spirits, and under the law as amended can only be issued to the distiller and are therefore without value, except for the purpose for which they are issued, and that purpose is clearly indicated upon their face. Under these circumstances they can not constitute the basis for an action against the Government in the hands of one to whom they were not issued and who does not sustain the relation of a distiller to the Government.

Therefore these receipts, being issued to distiller Pitts, do not constitute such a claim against the Government in the hands of the defendant in error as entitles him to bring his action against the collector of internal revenue for the purpose of collecting the sum involved therein.

The contention that the Government has no right to receive money in payment of taxes due on property forfeited can not be sustained. From the very nature of the con-

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tract entered into between the distiller and the Government the taxes remain due until paid, and it was therefore the duty of the collector of internal revenue to receive the same at any time, either before or after the property has been forfeited, because the liability assumed by the distiller and his sureties continues to exist until the taxes are paid and could only be extinguished by the payment of such taxes as were shown to be due by the distiller to the Government, and the payment of the same must necessarily be treated as an effort on the part of the distiller to comply with the requirements of the obligations which he assumed at the time he was granted authority to operate his distillery.

There is no view of this case in which the Government would be liable to the defendant in error. There is not a scintilla of proof to show that the Government entered into a contract with the defendant in error in regard to the payment of the tax, upon which this action is instituted; nor is there any evidence to show that the Government ratified or in any way acquiesced in the alleged sale of the packages in question to the defendant in error. Such being the case, the only remedy left to the defendant in error is to sue the representative of Pitts for the sum which he paid the collector of internal revenue on account of taxes due as aforesaid.

We are of opinion that the court erred in its instructions to the jury. Therefore, the judgment of the circuit court is reversed and the case remanded to the end that further proceedings may be had in conformity with the views herein expressed.

Reversed.

(T. D. 1031.)

Sale of United States internal-revenue stamps in the island of Porto Rico.

[Circular No. 73—Int. Rev. No. 679.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 25, 1906.

By an act of Congress, approved June 29, 1906, it is provided—

That all the United States internal-revenue taxes now imposed by law on articles of Porto Rican manufacture coming into the United States for consumption or sale may hereafter be paid by affixing to such articles before shipment thereof a proper United States internal-revenue stamp denoting such payment, and for the purpose of carrying into effect the provisions of this Act the Secretary of the Treasury is authorized to grant to such collector of internal revenue as may be recommended by the Commissioner of Internal Revenue, and approved by the Secretary, an allowance for the salary and expenses of a deputy collector of internal revenue, to be stationed at San Juan, Porto Rico, and the appointment of this deputy to be approved by the Secretary.

The collector will place in the hands of such deputy all stamps necessary for the payment of the proper tax on articles produced in Porto Rico and shipped to the United States, and the said deputy, upon proper payment made for said stamps, shall issue them to manufacturers in Porto Rico. All such stamps so issued or transferred to said deputy collector shall be charged to the collector and be accounted for by him as in the case of other tax-paid stamps.

The deputy collector assigned to this duty shall perform such other work in connection with the inspection and stamping of such articles, and shall make such returns

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as the Commissioner of Internal Revenue may, by regulations approved by the Secretary of the Treasury, direct, and all provisions of existing law relative to the appointment, duties, and compensation of deputy collectors of internal revenue, including office rent and other necessary expenses, shall, so far as applicable, apply to the deputy collector of internal revenue assigned to duty under the provisions of this Act.

SEC. 2. That before entering upon the duties of his office such deputy collector shall execute a bond, payable to the collector of internal revenue appointing him, in such amount and with such sureties as he may determine.

ASSIGNMENT OF DEPUTY COLLECTOR, ETC.

ART. 1. Under the authority conferred by the foregoing act, a deputy collector of internal revenue will hereafter be assigned to duty at San Juan, P. R., who will, subject to the following regulations, issue the necessary internal-revenue stamps for all articles to be shipped therefrom to the United States and subject to internal-revenue tax.

ART. 2. The stamps furnished for this purpose will have imprinted thereon the words "Porto Rico," and the collector of internal revenue and the deputy collector appointed by him will be held responsible for the safe-keeping and proper accounting for all such stamps, and for the proper accounting for all moneys received therefor, or in payment of tax on such articles, other than by stamp.

For distilled spirits, where the quantity contained in each case is less than represented by stamp of the lowest denomination furnished, appropriate labels, showing the payment of the tax due, will be furnished the deputy, and will be affixed to such cases as hereinafter provided. The tax so collected on all such articles will be reported by the collector on Form 58 of his assessment list.

APPLICATION FOR STAMPS, ETC.

ART. 3. In order to effect the purpose of the act named, the owner or consignor of taxable articles to be so shipped to the United States will be regarded as the manufacturers thereof, *provided the identity of such articles, as of Porto Rican manufacture, is satisfactorily established.* The deputy collector will fully satisfy himself on this point before issuing tax-paid stamps, and, if necessary, he will require sworn statements to be furnished as to the origin of the articles.

To obtain the required stamps, such owner or consignor will, at least forty-eight hours prior to shipment, file with the deputy collector an application in the following form:

Application for United States internal-revenue stamps.

SAN JUAN, P. R., ———, 190—.

To ——— ———,

Deputy collector internal revenue.

SIR: Application is hereby made for the necessary internal-revenue stamps to be affixed to the following-described articles of Porto Rican manufacture, now stored

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at ——, and intended for shipment to the port of ——, in the United States, by the way of —— (here name vessel) on or about the —— day of ——, 190—.

Name of article.	Number of packages or cases.	Gallons, pounds, or numbers.	Name of manufacturer and place of manufacture.	Name and address of consignee.

(a) Invoice value, per M—— $——.

——— ———,
Owner or Consignor.

a To be stated in shipment of cigarettes.

ART. 4. Upon the receipt of such application, or as soon thereafter as his other duties will permit, the deputy will visit the designated place of storage and there carefully inspect the articles named and ascertain the actual taxable quantity; and, after the packages have been properly marked and branded, as hereinafter required, and upon payment of the tax due, he will issue and affix, or cause to be affixed, to each such package a proper stamp, or label, denoting such payment.

INSPECTION OF DISTILLED SPIRITS.

ART. 5. Where distilled spirits (such as rum, or bay rum) are contained in casks or other gaugeable packages, the deputy collector will ascertain, by use of the gauging rod, the actual capacity of each such cask or package, and the quantity of spirits contained therein. He will also carefully proof the spirits, and mark or brand upon the bung stave and stamp head of each such cask or package the result of his gauge. Such casks or packages will be numbered serially, commencing with No. 1 for the first package, and will be marked, branded, and stamped in a manner similar to that required by existing regulations in case of spirits removed from warehouse upon payment of tax. The marks and brands on the stamp head may be abridged as follows:

No. 1.
P. R. RUM.
W. G. 45– P. G. 47.70.
Insp. Aug. 1–06.
T. P. S. No. ——
——— D. C.

ART. 6. If the spirits intended for shipment are contained in bottles, jugs, or other inclosures which do not admit of an accurate gauge, the deputy will ascertain the taxable quantity by measuring and proofing the contents of one or more such bottles or inclosures; and he will likewise mark or brand on each case containing such spirits the result of his inspection. Where such cases contain less than 10 gallons each, he will affix to each such case a label showing the taxable quantity, as provided in article 2.

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TOBACCO, SNUFF, AND CIGARS.

ART. 7. Where tobacco, snuff, or cigars are offered for inspection the deputy will carefully examine the same and ascertain the taxable quantity of each such article. He will exercise special care in the inspection of small cigars and cigarettes, in order that the proper tax thereon may be collected, according to the weight, wholesale value, or number of such articles; and, after the taxable quantity has been determined and the full amount of tax thereon paid, he will issue the proper tax-paid stamps therefor, to be affixed and canceled, under his direction, by the owner or shipper of the articles. Such tobacco, snuff, or cigars should be packed in statutory packages, such as are required for like articles of domestic manufacture (regs. No. 8, pp. 21, 42, 43, 54, 55), and should, in addition to the tax-paid stamps, have affixed thereto a label, printed on plain white paper, and in the English language, in the form following:

Porto Rico.

NOTICE.—The owner or consignee of the article or articles contained herein, and which are of Porto Rican manufacture, has duly tax-paid the contents and caused to be affixed to this package the internal-revenue stamp, as required by the laws of the United States. Every person is cautioned that the stamp hereon must be destroyed when the package is emptied.

No stamp will be required for leaf tobacco which has undergone no process of manufacture, or for refuse, scraps, cuttings, and clippings not reduced to a condition suitable for consumption. But all tobacco which has undergone any process of manufacture, such as renders it suitable for consumption, is taxable, and should be properly packed, stamped, and labeled before shipment.

OTHER ARTICLES.

ART. 8. Articles other than those herein specially provided for subject to internal-revenue tax, if offered for shipment, should be packed, labeled, and stamped as required for like articles for domestic manufacture.

FORFEITURE OF UNSTAMPED ARTICLES.

ART. 9. In view of the provision now made by law for the payment of the United States internal-revenue tax, prior to shipment of articles of Porto Rican manufacture to the United States, all such articles hereafter so shipped and not having thereon the required tax-paid stamps or other evidence of payment of tax, will, upon their arrival in the United States, be subject to forfeiture as in the case of other unstamped articles subject to tax. (Secs. 3289, 3373, 3398, Rev. Stat.)

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RETURNS TO BE RENDERED BY DEPUTY COLLECTOR.

ART. 10. On the first day of each month, or within ten days thereafter, the deputy collector issuing stamps, as herein provided, will render to the collector and to the Commissioner of Internal Revenue, a return in the following form:

OFFICE OF DEPUTY COLLECTOR,
San Juan, P. R., ———, *190—*.

SIR: I have to report that during the month of ———, 190—, the following-described articles of Porto Rican manufacture, intended for shipment to the United States, were duly inspected by me; that proper tax-paid stamps or labels were issued for and affixed to said articles, under the provisions of an act of Congress, approved June 29, 1906, and that said articles were also marked and branded as required by the regulations of the Treasury Department issued pursuant to said act:

Date of inspection.	Kind of article.	Distilled spirits.	Tobacco.	Cigars and cigarettes.		Amount of tax.	Name of consignee.	Port of destination.
		Gallons.	*Pounds.*	*M.*	*Rate.*	*Dollars.*		

———,
Deputy Collector.

ART. 11. The deputy collector will also render to the collector the reports on Forms 102, as prescribed in regulations No. 2, of all stamps received, sold, returned, and remaining on hand; and the collector will include in his reports to the Commissioner of Internal Revenue all such stamps.

ROBT. WILLIAMS, JR., *Acting Commissioner.*

Approved: LESLIE M. SHAW, *Secretary of the Treasury.*

(T. D. 1032.)

Instructions relative to forwarding public moneys by express.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 2, 1906.

To collectors of internal revenue:

The attention of collectors of internal revenue is invited to the fact that some of the bills filed at this office for the transportation of public moneys received in payment of internal-revenue taxes show that in some collection districts the regulations concerning the shipment of money by express are disregarded.

The regulations contemplate that the shipment of such funds shall be made as often as the collections reach $500 and in packages of $500, or multiples thereof as nearly as possible. In no case, except at the end of each month, should a package contain an amount much short of $500, or multiples thereof. (See Regs. No. 2, pp. 10, 60, and 61.)

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As the contract of the Government with the transportation company allows the latter to charge as much for $25 as for $500 and as much for $525 as for $1,000, etc., the expenses of the Government for this service have been unnecessarily augmented by shipments in an irregular manner—for example, in packages of $25, or $525, or $1,025, etc.

Attention is also invited to the fact that in mixed packages of coin and currency the rate charged by the transportation company is the contract rate for the money which forms the largest proportionate value, and that the coin rate is largely in excess of the currency rate.

Collectors will acknowledge receipt for this circular and see that the regulations are complied with in this respect.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(T. D. 1033.)

Instructions as to certain entries on Form No. 22.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 3, 1906.

To collectors of internal revenue:

The entry in Form 22 of collections from grape brandy used in the fortification of sweet wine, at 3 cents per gallon, as provided for in the act of June 7, 1906, should be placed under the heading "Distilled spirits, etc.," and on the vacant space under No. 12. The number should be 13.

Fees collected for making copies of records of special-tax payers under the provisions of section 3240, Revised Statutes, as amended by the act of June 21, 1906, should be entered opposite Abstract No. 47, and a note made under the head of "Remarks," detailing the sources from which such amounts were realized.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(T. D. 1034.)

Blank forms relative to the exportation of articles under internal-revenue laws.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 6, 1906.

To collectors of internal revenue and collectors of customs:

Blanks of the following-named forms, prescribed in regulations No. 29 of June 1, 1906, relating to the exportation of articles under internal-revenue laws, will be furnished to collectors on requisition:

INTERNAL-REVENUE FORMS.

Cat. No. 206. Application and entry for withdrawal of distilled spirits. Form A (parts 1, 2, 3, and 4), pages 20–25.

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Cat. No. 547. Export bond, Form B, for distilled spirits, page 22.
Cat. No. 548. Transportation bond, Form BB, for distilled spirits, page 23.
Cat. No. 263. Export bond, Form A, for fermented liquor, page 27.
Cat. No. 264. Declaration of brewer, Form C, page 32.
Cat. No. 265. Declaration of bottler, Form CC, page 33.
Cat. No. 549. Export bond, Form A (for articles other than distilled spirits and fermented liquor), page 38.
Cat. No. 550. Application for withdrawal, Form B (parts 1, 2, and 3), articles other than distilled spirits and fermented liquor, pages 42–43.

CUSTOM-HOUSE FORMS.

Cat. No. 774 (new). Export entry, Form D (parts 1, 2, and 3), pages 46–49, and attached certificates of transshipment, Forms G and H, page 55.
Cat. No. 799 (revised). Order for inspection and gauge (distilled spirits), page 47.
Cat. No. 801 (revised). Customs gauger's certificate, page 50.
Cat. No. 781 (revised). Export bond, Form E (distilled spirits), page 51.
Cat. No. 779 (new). Certificate of exportation, Form F, page 53.

Requisition for Forms 774, 781, 779, 799, and 801, above named, should be addressed to the Secretary of the Treasury.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(T. D. 1035.)

Fermented liquors.

It is violation of section 3449, Revised Statutes, to ship fermented liquors under the names of "cream of hops" and "hop tonic."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 18, 1906.

SIR: Your letter of the 11th instant, inclosing labels, bills, and freight bills of a shipment of "hop tonic" made by the ——— Company, of Chicago, Ill., to parties in your district, has been received and considered.

The names "cream of hops" and "hop tonic" are not the names known to the trade as indicating the kind and quality of the contents of the package.

Having billed these shipments in other than the names so known to the trade, the ——— Company has made itself liable under the law, and the case should be reported to the United States district attorney for your district for prosecution. * * *

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. H. O. WEAVER, *Collector Internal Revenue, Burlington, Iowa.*

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(T. D. 1036.)

Alphabetical list of special-tax payers.

Collectors to furnish copies of portion of record to prosecuting officers.—How figures are counted in estimating cost.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 20, 1906.

SIR: Your letter of the 15th instant, in regard to furnishing partial list of special-tax payers to prosecuting officers, has been received.

In my judgment, the act of June 21, 1906, providing that collectors may furnish prosecuting officers of a State, county, or municipality copies of record 10, empowers a collector to furnish a copy of any portion of that record requested.

* * * * * * *

You also make the following inquiry, viz:

Where figures appear in this list how shall they be counted? Shall each figure be counted one word, or shall the entire figures composing the number—for example, serial number of any paper—be counted as one word?

In taxing the cost of this transcript of record each figure is one word. The rule of telegraph companies in computing the cost of a telegram should be followed in this matter.

Respectfully,

JAMES C. WHEELER,
Acting Commissioner.

Mr. ERNEST COLDWELL,
Collector Fifth District, Nashville, Tenn.

(T. D. 1037.)

Fortification of pure sweet wines under the amendatory act of Congress approved June 7, 1906. Regulations No. 28—Supplement No. 1.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, August 24, 1906.

An act to amend existing laws relating to the fortification of pure sweet wines, approved June 7, 1906, amends section 43 of the act of October 1, 1890, as amended by section 68 of the act of August 28, 1894, so that said section 43 now reads as follows, the amended words being printed in italics:

SEC. 43. That the wine spirits mentioned in section forty-two of this Act is the product resulting from the distillation of fermented grape juice, *to which water may have been added prior to, during, or after fermentation, for the sole purpose of facilitating the fermentation and economical distillation thereof,* and shall be held to include the product *from grapes or their residues,* commonly known as grape brandy; and the pure sweet wine, which may be fortified free of tax, as provided in said section, is fermented

grape juice only, and shall contain no other substance whatever introduced before, at the time of, or after fermentation, *except as herein expressly provided;* and such sweet wine shall contain not less than four per centum of saccharine matter, which saccharine strength may be determined by testing with Balling's saccharometer or must scale, such sweet wine, after the evaporation of the spirits contained therein, and restoring the sample tested to original volume by addition of water: *Provided,* That the addition of pure boiled or condensed grape must or pure crystallized cane or beet sugar *or pure anhydrous sugar* to the pure grape juice aforesaid, or the fermented product of such grape juice prior to the fortification provided by this Act for the sole purpose of perfecting sweet wines according to commercial standard, *or the addition of water in such quantities only as may be necessary in the mechanical operation of grape conveyors, crushers, and pipes leading to fermenting tanks,* shall not be excluded by the definition of pure sweet wine aforesaid: *Provided, however,* That the cane or beet sugar, *or pure anhydrous sugar, or water,* so used shall *not in either* case be in excess of ten per centum of the weight of the wine to be fortified under this Act: *And provided further, That the addition of water herein authorized shall be under such regulations and limitations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may from time to time prescribe; but in no case shall such wines to which water has been added be eligible for fortification under the provisions of this Act where the same, after fermentation and before fortification, have an alcoholic strength of less than five per centum of their volume.*

As the only material change in the above-amended section, not already covered by regulations No. 28, is the use of water for the sole purpose of assisting in the "mechanical operation of grape conveyors, crushers, and pipes leading to the fermenting tanks," the following instructions are issued for the guidance of officers in charge of crushers and the fortification of wine. Water is to be used only when absolutely necessary to the proper operation of the mechanical devices used in crushing and conveying the grapes to the fermenting tanks, such water to be used only when and in such quantities as is, in the judgment of the officer in charge, necessary. No water may be used except under the direct supervision of an officer of internal revenue, and in no case more than 10 per cent of the weight of the wine. The quantity of water used will be determined by the gauger by actual measurement, or such other means as will satisfy him that the quantity used does not exceed the limit stated. In case it is discovered that the 10 per cent limit has been exceeded, such material will not be eligible for fortification, and the officer supervising the making of the wines will so mark the tank containing the same that the contents will not through error at any time be offered for fortification. The officer in charge of the crushers will, when water is used, make out in triplicate the first part of Form No. 546 stating the date of crushing, number of the fermenting tank containing the wine, contents of tank, and amount of water used. One of the copies he will affix to the tank and the other two he will furnish the officer in charge of fortification who will, after making his tests, fill out the remainder of the form and attach the same to the original and duplicate Form 275.

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When it is the desire of the wine maker to add sugar to the wines to be fortified, he will so inform the officer in charge of the fortifying room. The officer will then make his test for sugar present in wines offered for fortification and enter the same in columns 12 and 14 of Form 275 in black ink; and after the desired amount of sugar has been added he will make his test for sugar and alcohol. The added sugar will be entered in column 14 in red ink immediately below the entry already made and designate the kind of sugar added by using the initial "A" for anhydrous, "B" for beet, "C" for cane, and "M" for must.

The "saccharine" that may be added under the law is "pure boiled or condensed grape must or pure crystallized cane or beet sugar or pure anhydrous sugar," and the addition of such sugar is to be prior to fortification and "for the sole purpose of perfecting such sweet wines according to commercial standard." Anhydrous primarily means without moisture, and pure anhydrous sugar may be held to include pure dextrose, and is held to exclude such substances as liquid glucose.

It is held that the addition of sugar to wine for the purpose of raising the saccharine strength for fortification can only be done after the wine has been deposited in the fortifying room and has been tested by the gauger to determine the sugar contained therein, such addition of sugar to be made under the personal supervision of the gauger assigned to such fortifying room.

If the wine maker so desires, he may prepare a sirup of the sugar in which at least two parts by weight of sugar are dissolved in one part by weight of water or fresh must. The sirup must be prepared of pure sugars, as defined above, and must be made in the fortifying room under the supervision of the officer in charge thereof. This saturated solution may be prepared in advance of its use and held in the fortifying room.

Section 42 of the original act permits the use of brandy for the preservation of the sugar contained in the wines to be fortified, and as this section has not been amended by either of the subsequent amendatory acts it must be held that wines to be eligible for fortification must be sweet wines; and if the wines offered contain no sugar it must be evident that such wines are not eligible for fortification, and if any such are offered the officer must reject them. No substance may be added to the wines except in the presence of the officer in charge and then only in such quantities and under such limitations as the statutes and the regulations pursuant thereto permit. Water may be added only under the provisions as already set forth. Brandy and sugar or pure boiled or condensed grape must may be added only in the fortifying room and under the direct supervision of the officer in charge thereof.

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Section 2 of the amendatory act approved June 7, 1906, amends section 49 of the act approved October 1, 1890, and the amended section now reads as follows:

SEC. 49. That wine spirits used in fortifying wines may be recovered from such wine only on the premises of a duly authorized grape-brandy distiller; and for the purpose of such recovery wine so fortified may be received as material on the premises of such a distiller, on a special permit of the collector of internal revenue in whose district the distillery is located; and the distiller will be held to pay the tax on a product from such wines as will include both the alcoholic strength therein produced by the fermentation of the grape juice and that obtained from the added distilled spirits, *subject, however, to the provisions of section thirty-three hundred and nine of the Revised Statutes of the United States, as amended by section six of the Act entitled "An Act to amend the laws relating to internal revenue," approved March first, eighteen hundred and seventy-nine; and such spirits so recovered may be used by such distiller to fortify wines as authorized by section forty-two of the aforesaid Act, approved October first, eighteen hundred and ninety.*

The material change in this section is that the distiller receiving fortified wine on his distillery premises for the purpose of recovering the brandy in such wines will be held to produce not less than 80 per cent of the alcoholic strength produced by the fermentation of the grape juice and that obtained from the added distilled spirits.

Before receiving such material on his distillery premises the distiller will make application to the collector of internal revenue for the district in which the distillery is located for permission to receive such material. When the permission has been granted and the material received, the collector will be so notified and an officer detailed to make a survey of the tanks containing the material and mark the same in such manner that any visiting officer will experience no difficulty in identifying the tanks containing the same. The distiller may then add as much water as he may desire to aid in its further fermentation. (See sec. 43 as amended.) When the distiller is ready to begin the distillation he will so notify the officer detailed at his distillery of his intention. The officer will then make a gauge of the material to be distilled and a test for the alcoholic strength thereof, and the result of such gauge and test will be entered on his record No. 528, in duplicate, both copies of which he will forward to the collector to be filed with the distiller's special report on Form 15. The distiller, before beginning to distil, will register "for use" on Form 26 stating the nature of the material to be used, the still he intends using for the recovery of such brandy, and continue the distillation until such time as the material has been all distilled when the still will be registered "not for use." The distiller will make report on Form 15 accounting for the material used as "fortified wine of * * * alcoholic strength," and report the amount of brandy produced therefrom and give such other information as is required by regulation No. 7, page 205, second and third paragraphs. This special report should be forwarded to the collector within ten days after the still used was registered "not for

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use," and any deficiency shown by such report will be reported on the collector's current monthly list for assessment. All such spirits so recovered will be treated in the same manner as spirits produced from other materials, and the regulations pertaining to the gauging, tax payment, or removal to a special bonded warehouse, or for the fortification of sweet wine will be followed.

No sugar other than condensed grape must shall be brought into a fruit brandy distillery.

All sugars or condensed must brought into any winery making sweet wines shall be placed in the fortifying room thereof and used only in the presence of the officer in charge of such room.

Where sugar other than pure boiled or condensed grape must is used in making wines other than fortified sweet wines in a winery making sweet wines, such sugar other than pure boiled or condensed grape must shall be added to such wines only in the presence of a Government officer, and the tank or tanks containing wine into which sugar has been introduced shall be marked by the officer so as to show that the contents is unfortified wine to which sugar has been added and is ineligible as distilling material.

Section 49 of the sweet wine law authorizes the redistillation of fortified wine, and the amendment to the law permits the product of such redistillation to be used in the fortification of wine. Unfortified wine to which sugar has been added is not a proper material for distillation by a fruit distiller and will not be permitted to be used as such. The distillation of sugar into spirits can be lawfully carried on only at a molasses distillery.

Officers assigned to wineries and fruit distilleries will be expected to exercise due diligence to prevent the use of unfortified wine to which sugar has been added, as distilling material, and, should such a case be discovered, the officer on duty will immediately report the fact to the collector of the district. The collector will thereupon proceed to make a careful investigation of the case, and take such action by seizure or otherwise as the facts elicited seem to warrant.

Sections 3, 4, 5, and 6 of the amendatory act approved June 7, 1906, are new legislation and are as follows:

SEC. 3. That the Commissioner of Internal Revenue is hereby authorized to assign at each winery where wines are to be fortified such number of gaugers or storekeeper-gaugers, in the capacity of gaugers, for special duties as may be necessary for the proper supervision of the making and fortifying of such wines, and the compensation of such officers shall not exceed five dollars per diem while so assigned, together with their actual and necessary traveling expenses, and also a reasonable allowance for their board bills, to be fixed by the Commissioner of Internal Revenue, but not to exceed two dollars per day for said board bills; and to cover the expenses to the Government attending the making and fortification of such sweet wines there shall be levied and assessed against each maker of such wines, and collected monthly a charge of three cents on each taxable gallon of brandy used by him in the fortification of such wines during the preceding month. That bonds hereafter given under the provisions of the

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aforesaid Act of October first, eighteen hundred and ninety as amended, shall be conditioned for the payment of the tax on all brandy removed thereunder and not used and accounted for within the time and in the manner required by law and regulations, and for the payment of all charges herein imposed on the brandy so withdrawn and used; and the said bonds shall contain such other conditions as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

SEC. 4. That where brandy to be used in the fortification of wine is distilled on premises adjacent to the winery premises, the Commissioner of Internal Revenue may, in his discretion, authorize the erection on either of said premises of fermenting vats for material to be used either in the manufacture of such wines or the brandy to be used in the fortification thereof; and all such materials used or received on either of said premises shall be under the supervision of the officer assigned to such winery, and shall be accounted for at such times and in such manner as the Commissioner may direct.

SEC. 5. That the provisions of section thirty-two hundred and twenty-one and thirty-two hundred and twenty-three of the Revised Statutes of the United States, as amended by an Act approved March first, eighteen hundred and seventy-nine, are hereby extended to grape brandy withdrawn for use in the fortification of sweet wines, and which prior to such use, is accidentally destroyed by fire or other casualty while stored in the fortifying room on the winery premises.

SEC. 6. That any person who by any process recovers from wines fortified under the provisions of the aforesaid Act approved October first, eighteen hundred and ninety or amendments thereto, any brandy or wine spirits used in the manufacture or fortification of said wine, otherwise than is provided for in said act and its amendments, or who shall rectify, mix, or compound with other distilled spirits such fortified wines or grape brandy or wine spirits unlawfully recovered therefrom shall, on conviction, be punished for each such offense by a fine of not less than two hundred dollars, nor more than one thousand dollars. But the provisions of this section, and the provisions of section thirty-two hundred and forty-four of the Revised Statutes of the United States, as amended, relating to rectification, shall not be held to apply to the blending of pure sweet wines fortified under the provisions of the said Act of October first, eighteen hundred and ninety, or amendments thereto, where such wines are blended for the sole purpose of perfecting the same according to commercial standard.

Section 3 provides for the assessment of a charge of 3 cents on each taxable gallon of brandy used by the wine maker in the fortification of sweet wines. This amount will be reported on the list for the month following that in which the brandy was used, for assessment, and will be collected as other assessments are collected.

Where brandy to be used in the fortification of wine is distilled on premises adjacent to the winery premises, fermenting tanks may be erected in or adjoining such winery premises, and any fermenting tank so erected or now in use on such winery premises may be used either in the manufacture of such wines or for the fermenting of material for the manufacture of brandy to be used in the fortification thereof, and all such materials so used or received on either the winery or distillery premises shall be under the supervision of the officer assigned thereto.

Each distiller of fruit brandy operating a distillery in connection with a winery making sweet wines, must set aside in or near his

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distillery two or more tanks for holding distilling material, or if there are not a sufficient number of such tanks available in or near his distillery, he may set aside in the winery itself, such additional tanks as may be required, such tanks to be plainly and indelibly marked "Receiving Tank No. — for Distilling Material." Into these tanks must be drawn all material which is to go to the distillery for distillation. Before any of the contents of any one of these receiving tanks are drawn off such receiving tank must be disconnected from the fermenting tanks and the contents properly gauged to ascertain the quantity contained therein both as to volume and alcoholic strength by a United States gauger. Such receiving tank may then be connected with the chargers of the still and must be emptied before other material can be put therein. Proper entries of such material so gauged must be made on that date on the distiller's record, Form 25½, and duly reported on his monthly report, Form 15.

The gauger assigned to such distillery shall keep a complete record of the filling and emptying of all receiving tanks for distilling material, showing the proper dates and the contents thereof by an actual gauge made before the contents are drawn off for distillation as provided in the preceding paragraph.

ARTICLES IN REGULATIONS No. 28 THAT HAVE BEEN REVISED.

ART. 3. The penal sum of the bond will be sufficiently large to cover double the amount of internal-revenue tax on the amount of brandy chargeable to the bond in any one month—that is, brandy brought forward from the previous month, withdrawn during the month, and brandy used in the fortification of wine which may have been detained in the fortifying room by the gauger or under the order of the collector or revenue agent, or one acting under their authority. In no case shall any bond be accepted for less than $500. The collector will give credit on the bond for all brandy used by the principal when the wine fortified with such brandy has been lawfully removed from the fortifying room.

ART. 8. (1) Only such wines as are the product of fresh grapes grown on the winery premises, or purchased from neighboring grape growers, such grapes to be crushed and the juice expressed and fermented on the winery premises, may be fortified.

(2) Wines are not eligible for fortification that have not been fermented, that contain more than 15 per cent of alcoholic strength, that have been fermented out to such an extent that there is no saccharine left to preserve by fortification, or that when water has been used in the crushing do not contain 5 per cent of alcohol when offered for fortification.

(3) All substances except water, the use of which is permitted by section 2 of the act of June 7, 1906, must be introduced into the wine in the fortifying room and in the presence of the officer in charge, and after he has made his first test for sugar, and in no case may any substances, except pure boiled or condensed grape must, be used in excess of 10 per cent of the weight of the wines.

ART. 10. At every winery where pure sweet wines are produced and offered for fortification with brandy withdrawn free of tax, a room to be known as the fortifying room, must be set apart. This room must be securely built and partitioned so as to be entirely separate from every other part of the winery, with all the doors, windows, or other openings leading to or from the same so arranged and built as to be securely

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locked, bolted, or barred from the inside, except the entrance door which will be locked with a seal lock, the key of which will, at all times when brandy or wine is about to be fortified or is held for any reason, be in the custody of an officer of internal revenue. This room must be sufficiently large to admit of the storage of all brandy that may be on hand at any one time. As soon as brandy is gauged for transfer to this room it must be immediately removed and deposited therein. An office of not less than 10 feet square, provided with suitable desk, heat, and light, and every facility, including water for making tests of wine, shall be provided by the wine maker for the gauger in the fortifying room. Stopcocks on all pipes leading to or from the fortifying room must be so arranged as to be wholly within the fortifying room, of easy access, and under the control of the officer in charge. Scales must also be provided and placed in the fortifying room by the wine maker for gauging the brandy about to be used; also dies, stencils, etc., for use in marking and branding the packages of brandy withdrawn from the distillery.

ART. 17. This article is so amended that when brandy is gauged and immediately removed to the fortifying room, the gauger may stencil the marks and brands required on the package instead of cutting or burning them. The provisions of Circular No. 678 relative to the use of cylindrical metal barrels or drums as containers of high-proof spirits is extended to include brandy withdrawn from distilleries for fortification purposes, such packages to be branded in accordance with the above instructions.

ART. 19. As the gauger in charge of fortification is required to gauge the brandy in the fortifying room when used and to make report of such gauge on Form 59½, copies of which must be filed with Form 275, he may, by securely pinning the Form 59½ to the Form 275, omit entries in columns 2 to 5, inclusive, on Form 275.

DETENTION OR SEIZURE OF BRANDY WITHDRAWN FOR THE FORTIFICATION OF SWEET WINE, AND ASSESSMENT OF TAX IN CASE OF DISCREPANCY BETWEEN THE MARKS AND BRANDS ON PACKAGES AND THE ACTUAL TAXABLE CONTENTS.

Whenever, upon examination of any package by the gauger in charge of the fortifying room, a deficiency of 1 proof gallon or more is found, such package shall be detained for investigation and a careful gauge made by at least two competent gaugers, and if the deficiency found by both of them shall amount to 1 proof gallon or more in any package, the taxable deficiency will be estimated by the collector and reported for assessment on Form 23 against the wine maker.

In making such report the serial numbers of the packages in which the deficiency is found shall be given, and the names of the gaugers making such gauge must be signed to the report.

Whenever such deficiency is found by the gauger in charge of fortification, he will cause such package or packages to be set aside and notify the wine maker of such deficiency. The wine maker may then request that another gauger be detailed to verify the gauge made by the gauger in charge of fortification. If the gauge agreed to by the two gaugers as the actual gauge still shows the deficiency to be one or more taxable gallons, the package or packages will be held in the fortifying room until such time as the gauger in charge of the fortification has been notified by the collector that the tax on the deficiency has been paid, but in no case will any package be held in the fortifying room to exceed sixty days, or after the wine season has closed. If there is no ground for detention other than this deficiency and the collector is satisfied that the deficiency occurred without fraudulent intent, he may release the goods without cost to the Government upon payment of the tax on the deficiency found.

If the deficiency found be so large as to awaken suspicion of fraud, the spirits should be seized and report made to this office for instructions as to proceeding for their forfeiture.

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No assessment is to be reported unless the deficiency amounts to 1 full proof gallon to a package. In case the deficiency exceeds 1 full proof gallon, any fraction arising of one or more tenths of a gallon will be retained, and the hundredth of a gallon less than one-tenth excluded.

Should the wine maker, upon being notified of the deficiency found, desire to accept the gauger's inspection of the brandy, he may do so by filing with the Form 59½, showing such deficiency, his certificate that such gauge is acceptable to him and that he will pay the tax on the deficiency upon demand. Such certificate will be attached to the Form 59½, on which the gauge of the package is reported.

When a distiller, operating a distillery in connection with a winery, reports that he has on hand any distilling material which has become unfit for distillation, and asks for the destruction of the same, the officer assigned to the distillery and winery will inspect such material for the purpose of determining whether it is actually unfit for distillation.

When it is found that the material is useless for distillation, it will be destroyed under the supervision of a deputy collector, or, if that officer is not available when such destruction must be accomplished, the gauger assigned to the distillery and winery will supervise the destruction of such material and report his action promptly to the collector of the district on Form 192 and note the fact on the distiller's record, Form 25½.

ART. 20. When fortified wines have been released from the fortifying room such wine must not be returned to the fortifying room for further fortification.

ART. 22. "Form 257" on the last line of the first paragraph of this article should read "Form 275."

ART. 25. The first lines of the brand as required by this article may be omitted, as this information is already on the package. The last line of this brand should read, "To Winery No. ———, district of ————."

ART. 49. Particular attention is called to the last paragraph of this article; and if any brandy known to have been withdrawn for fortification purposes is not accounted for by the 10th of the succeeding month when the collector's monthly list (Form 23) is forwarded to this office, the collector will report such brandy on said list for assessment. Brandy will be regarded as properly accounted for when reported—as on hand or used—on Form 261 for the month during which the brandy was received on the winery premises.

ART. 53. The first paragraph of this article is amended by adding, "The marks, brands, or stamps shall not be destroyed until the package has been entirely emptied of the wine, lees, and wash."

APPENDIX.

The manner of taking samples of wine before and after fortification, as set forth on pages 28 and 39 of regulations No. 28, will be continued, but the manner of distribution of such samples will not be the same as heretofore.

The chemical laboratory at San Francisco having been abolished, such chemical analyses as are required will be made by the revenue agent and his assistants located at San Francisco, and all samples for chemical examination from New Mexico and the first and fourth districts of California will be forwarded to the revenue agent in the same manner as they were formerly sent to the collector of the first California district.

Samples will be taken from each tank of wine fortified, as before, and when the wine in any such tank contains a total alcoholic

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strength after fortification of more than 24 per cent, such tank and contents shall be detained in the fortifying room, and samples thereof at once forwarded to the revenue agent at San Francisco where they will be immediately analyzed. Should the analysis show that the tank of wine from which the samples were taken has been overfortified, the same shall be seized for forfeiture as provided in section 42 of the act of October 1, 1890.

If the test made by the gauger shows in any case that the alcoholic strength of such fortified wine is between 23 per cent and 24 per cent, samples thereof will at once be forwarded to the revenue agent for immediate chemical analysis, a report of which shall be furnished the collector with the least possible delay, in order that the suspected tank may not be detained in the fortifying room longer than is absolutely necessary.

In case the 14 per cent limit is exceeded or is so closely approached that the officer in charge of the fortification questions the correctness of his tests, he will at once forward to the collector, or the deputy collector in charge of the division, a copy of the report of the fortification, on Form 275, and such other information as will enable him to make such calculations as will be necessary for him to determine whether an excess of brandy has been used.

If the result of the examination shows that the wine has been overfortified, proceedings will be instituted by the collector for recovery of the penalty provided by section 44 of the act of October 1, 1890.

The samples of wine not required to be sent to the revenue agent for chemical analysis shall be retained in the fortifying room under the control of the gauger for a period of fifteen days after which the same may be delivered to the wine maker to be returned to the tanks from which they were taken, or for such other disposition as may be properly made thereof.

During the time when these extra samples are thus retained at the winery, it will be expected of the deputy collector and other examining officers that they will select from the number so held certain samples and proceed to verify the tests of the gauger making the fortification. When any noticeable discrepancy is discovered between the test of the visiting officer and that made by the gauger, one of the remaining samples shall be at once forwarded to the revenue agent, together with a full report in the case for further examination. Any error of the gauger developed by the examination of the extra samples will be reported to the collector and to this office.

JOHN W. YERKES,
Commissioner.

Approved:

LESLIE M. SHAW, *Secretary of the Treasury.*

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(T. D. 1038.)

Special tax—Prosecution for nonpayment.

Where special-tax payers are in business from year to year, deputy collectors are required to furnish each of them in the month of June with blank Form 11, for making the sworn return for the ensuing year before the end of the month of July. If the person then fails to make return and pay the special tax within that month, in the following month (August) the case should be reported for assessment and prosecution.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 5, 1906.

SIR: In reply to your letter of the 28th ultimo, inquiring whether it meets with the approval of this office for you to file informations and prosecute cases against special-tax payers who fail to make sworn returns, Form 11, in the month in which they begin business, and stating that you refer to a certain class of persons "who have made it a practice for two or three years past of failing to file Form 11 until they are called upon by the deputy collector," you are hereby advised that deputy collectors should be instructed to keep a list of all persons engaged in business in their divisions, from year to year, who are required to take out special-tax stamps, and to furnish every such person in the month of June with a blank Form 11, with notification that their sworn returns thereon must be in the hands of the deputy for the ensuing year, beginning July 1, before the end of that month. In every case where this is done, and the person nevertheless allows the entire month of July to go by without making such return and paying the special tax, in the following month (August) the collector should report the case to this office for assessment of special tax and penalty and to the United States district attorney for prosecution.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. F. W. HOWBERT, *Collector Internal Revenue, Denver, Colo.*

(T. D. 1039.)

Returns of manufacturers of tobacco and cigars—Power of attorney.

A manufacturer may employ, under power of attorney, a person to prepare his returns, inventories, etc., but the returns and inventories must be verified by the oath of the manufacturer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 6, 1906.

SIR: Your letter of the 28th ultimo, concerning the preparation and verification of returns, inventories, etc., of manufacturers of tobacco and cigars, is received.

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In this matter, certain cigar and tobacco manufacturers of ———, your district, have given power of attorney to ——— to prepare their papers, returns, inventories, etc., and to verify the same by his oath, where the law requires the paper to be sworn to, and to transact other internal-revenue business with your office. The question having been raised as to whether such manufacturers could delegate authority by power of attorney to verify papers which the law requires shall be verified by the oath of the manufacturer, your attention is respectfully invited to the following requirements of law:

1. That manufacturers of tobacco and cigars shall keep a book and make certain entries therein, in the manner prescribed by the Commissioner of Internal Revenue.

2. That manufacturers of tobacco and cigars shall make certain inventories and render certain returns in accordance with the regulations prescribed by the Commissioner of Internal Revenue.

3. That certain papers relating to the business of cigar and tobacco manufacturers shall be rendered and verified by the oath of the manufacturer.

Concerning the execution of such papers, this office holds that the manufacturer can not by power of attorney delegate to another person authority to perform a duty required by the statutes and the covenants of his bond, the failure to perform or the fraudulent performance of which imposes fines, penalties, and imprisonment upon the manufacturer—

1. Because a person can not be deprived of his liberty by an unlawful or fraudulent act committed by another, unless it can be shown that the unlawful or fraudulent act was due to a conspiracy between the two.

2. Because the making of an oath is a personal matter and in the very highest degree a matter of conscience, and where, as in such cases, the law commands that the oath must be made by the manufacturer, the performance of the act can not be delegated to another.

3. Because the sureties on the bond of a manufacturer may raise the question as to the liability under the covenants of the bond if, by the consent of this office, another person, by power of attorney, is permitted to assume the duties of a manufacturer in the matter of making returns, inventories, etc., and verifying the same.

This office adheres to the position taken and rules stated in office letter of June 18, 1906. The returns and inventories of cigar and tobacco manufacturers must be verified by the oath of the manufacturer as the law dictates, and you will please see that the law and regulations in this respect are complied with.

This office has not objected, and does not now object, to the employment by a manufacturer under power of attorney of a person to prepare his books, returns, inventories, and other papers, but the

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returns and inventories must be verified by the oath of the manufacturer, as already stated, and persons acting under power of attorney for such manufacturer must not be permitted to make your office a place of convenience for the conduct of their business, nor must they have access to the records of your office in such manner as to enable them to ascertain the output, process of manufacture, quantity and kind of material used, or anything contained in the papers filed by manufacturers for whom they are not authorized to act.

Respectfully, JOHN W. YERKES, *Commissioner.*

——— ———, *Collector of Internal Revenue.*

(T. D. 1040.)

Distillers' warehousing bonds.

Outstanding liability of surety companies signing warehousing bonds of any one distiller should not exceed the amount of assets qualified in by such companies.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 11, 1906.

SIR: In reply to your letter of the 8th instant, in reference to warehousing bonds signed by surety companies, you are informed that, in the opinion of this office, the amount of liability assumed by a surety company on the bonds of any one distiller should not exceed the company's assets. In other words, that the liability of such a company, like that of an individual sole surety, on the bonds of any one distiller should not exceed the amount which the surety would be able to respond to in case the bonds should be forfeited.

This rule would not preclude the acceptance of the same company on bonds of several distillers which aggregate an amount in excess of the company's assets.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. P. G. RENNICK, *Collector Fifth District, Peoria, Ill.*

(T. D. 1041.)

Circulation—Ten per cent tax.

The tax of 10 per cent under section 20, act of February 8, 1875, is not required to be paid on notes of foreign banks and corporations, whether bought in foreign countries or in the United States, which are sold to tourists or others leaving the United States for foreign countries, and have not been used in this country for circulation in lieu of the money or currency of the United States.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 24, 1906.

SIR: Your letter of the 14th instant has been received, stating that persons, firms, associations, corporations, State banks, and national banks in New York City are buying from tourists returning to this country and from foreigners coming into this country, and from

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foreign banking houses, notes of foreign banks and corporations, which notes they sell to tourists and foreigners leaving this country, and to other persons, steamship companies, and brokers in this country to be sold to tourists and others leaving the United States for foreign countries; and submitting the question whether or not by reason of such transactions these different persons, firms, associations, banks, etc., become liable for the tax of 10 per cent on the amount of these notes paid out by them, under the provisions of section 20 of the act of February 8, 1875 (sec. 3413 *b*, Comp. of Int. Rev. Laws of 1900, p. 335).

The tax of 10 per cent can not be lawfully exacted from persons, firms, or banks buying and paying out these notes in the manner described in the three questions submitted by you unless these notes have been used for circulation in the United States. They are not to be regarded as having been so used unless they have past from hand to hand in lieu of the money or currency of the United States. It does not appear that they have been thus circulated, nor is it probable that they have been or can be so used. The language of the statute is explicit in imposing tax only upon notes that have been "used for circulation."

The Canadian bank notes to which you refer were used for circulation in the United States on account of the proximity to the Canadian border of the towns and cities in which they were used. The fact of their having been so used being clearly established, the banks in this country receiving these Canadian bank notes after such circulation and paying them out again in the United States were, under the rulings to which you refer, held liable for the tax thereon. These rulings have no application to notes of the Bank of England, which you particularly mention, or to the notes of any other foreign country, which tho bought and sold here can not be used for circulation in the United States—that is, do not pass from hand to hand in payment of debt or in purchase of goods in lieu of the money of the United States.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. JOHN W. SINSEL, *Internal Revenue Agent, New York.*

(T. D. 1042.)

Special tax—Sale of whisky by a corporation acting as a fiduciary.

Where a corporation has received whisky in trust for the public benefit, it is entitled, as a fiduciary, to sell the whisky "in one parcel only, or at public auction in parcels not less than twenty wine gallons," without paying special tax therefor as a liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 26, 1906.

SIR: Your letter of the 20th instant has been received, inclosing a letter from Henry H. Scott, executive officer of the San Francisco

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Relief and Red Cross Funds (a corporation), stating that their corporation has a large supply of whisky on hand which "is not of value for relief purposes" and that it is their desire "to convert the same as soon as possible into cash;" therefore asking for a permit to do so without payment of special tax as wholesale liquor dealers.

If, as the fact is understood to be, this whisky was received by the relief corporation in trust for the public benefit, you may inform the corporation that having thus received the whisky they are to be regarded as in the position of fiduciary within the meaning and intent of section 4, act of March 1, 1879, and, therefore, under the exempting provision of that section, may sell these spirits "in one parcel only, or at public auction in parcels not less than twenty wine gallons," without payment of special tax therefor (Comp. of Int. Rev. laws, 1900, p. 126).

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. J. C. LYNCH,
Collector Internal Revenue, San Francisco, Cal.

(T. D. 1043.)

Special tax—Tailors furnishing alcoholic liquors, as premiums. with clothes.

Tailors who send out bottles of distilled spirits or other alcoholic liquors, as premiums, with suits of clothes, are to be regarded as disposing of the liquors under conditions constituting sale of them, and therefore are to be required to pay special tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 25, 1906.

GENTLEMEN: Your letter of the 17th instant has been received, stating that you are "figuring at the present time with a tailoring concern, * * * who, in the past, have been giving away with the first order for their clothes various articles as a premium, and who now desire to give away this year, instead of these old-time premiums, 6 bottles of assorted liquors," and "desire to pack these 6 bottles and a suit of clothes or an overcoat in one box, and to ship this box by express."

To the second inquiry which you make in this case my reply is that the tailors thus sending out bottles of distilled spirits or wine, or other liquor, coming under the internal-revenue laws, would be regarded as disposing of the liquors under conditions constituting sale of them, and would, therefore, be required to pay special tax as liquor dealers. * * *

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———.

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(T. D. 1044.)

Special tax—Collins lemon ginger.

Dealers in the alcoholic compound called "lemon ginger," manufactured by Collins Brothers Medicine Company, of St. Louis, now "The Ballard Snow Liniment Company," are required to pay special tax as liquor dealers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 27, 1906.

SIR: Herewith is inclosed a copy of the report made by the chemist here of his analysis of a sample of "lemon ginger" sent in by you and referred to by you in your letter of the 11th instant as manufactured by Collins Brothers Medicine Company, of St. Louis, Mo., now known as "The Ballard Snow Liniment Company," James F. Ballard, proprietor.

From this report it appears that this compound contains 57.8 per cent of alcohol by volume, and that while it contains some stillingia root and yellow dock and ginger, yet "it is concluded that this material does not contain sufficient medicinal qualities to be considered as a medicine, but should be classed more nearly with those beverages of the type of cordials or liqueurs."

You will therefore report all persons in your district engaged in the sale of this "lemon ginger" for assessment of special tax and penalty as liquor dealers.

Respectfully,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. WEBSTER FLANAGAN,
Collector Third District, Austin, Tex.

(T. D. 1045.)

Distilled spirits.

Bonds given for the transportation of distilled spirits withdrawn free of tax for use of the United States may be credited with losses occurring during transportation, where such losses are due to natural causes and are so certified by the officer to whom the spirits were consigned.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 28, 1906.

Mr. HERMAN F. CELLARIUS,
Collector First District, Cincinnati, Ohio.

SIR: In reply to your letter of the 22d instant, relative to a discrepancy of 24.86 gallons in the receipt for a shipment of spirits withdrawn under a permit dated July 11, 1906, for the use of the Navy Department, you are informed that the inspector of ordnance

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having certified that the loss in transit was evidently due to natural causes, credit should be given on the transportation and delivery bond for the full amount withdrawn.

Answering your question as to who is liable for the tax on the loss which occurs in transit from the distillery to the point where the United States receipts for alcohol withdrawn under section 3464, you are informed that tax will not be collected where the inspector certifies that the shortage was due to natural causes. In the event of a short delivery of packages, or if the circumstances indicated that the spirits had been tampered with, or stolen in transit, the party giving the transportation bond would be liable for the tax on the shortage.

Respectfully, JOHN W. YERKES, *Commissioner.*

Approved:

C. H. KEEP, *Acting Secretary.*

(T. D. 1046.)

Returns of taxpayers.

Certain returns of taxpayers required by law must be verified by the taxpayer himself and not by an agent or attorney in fact.—The scope of T. D. 1039 defined.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 29, 1906.

SIR: In your letter of September 17 you say that you desire to know whether you would be allowed under T. D. 1039 to accept reports from brewers, distillers, wholesale liquor dealers, and wholesale dealers in oleomargarine signed by an attorney in fact.

In reply you are advised as follows:

Section 3337, Revised Statutes, provides that every person who owns or occupies any brewery or premises used or intended to be used for the purpose of brewing or making such fermented liquors, or who has such premises under his control or superintendence as agent for the owner or occupant, shall enter or cause to be entered daily in the book kept for that purpose certain things. That section also provides that either of the persons named in the first clause thereof shall render, on or before the tenth day of each month, a true statement, in duplicate, taken from the books kept, which statement he shall verify or cause to be verified. Hence, under this statute, it is not necessary that the brewer sign or verify the monthly statement filed with the collector. It is sufficient if his agent or superintendent signs the report and either verifies it himself or causes it to be verified. The ruling contained in T. D. 1039 was not intended, therefore, to apply to reports required of brewers under section 3337, Revised Statutes.

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Section 3307, Revised Statutes, referring to the monthly reports of distillers, provides that the distiller or the principal manager of the distillery shall subscribe the oath to his return; and hence, T. D. 1039 was not intended to apply to the monthly returns of distilleries as required in this section.

Section 3293, requiring distillers to make sworn entry for deposit in distillery warehouse, provides that this entry shall be "verified by the oath of the distiller of the same attached to the entry." Entries for deposit in distillery warehouse, therefore, must be sworn to by the distiller himself; and a return sworn to by his manager or by any person acting under power of attorney will not be accepted.

Section 3318, Revised Statutes, requiring rectifiers and wholesale liquor dealers to keep certain books and make certain returns, provides that a transcript of the entries made in such books shall be filed with the collector each month, and that this transcript shall be verified by oath. Under the wording of this section, which is—

> That every person required to keep the books * * * shall, on or before the tenth day of each month, make a full and complete transcript of all entries made in such book during the month preceding, and, after verifying the same by oath, shall forward the same to the collector of the district in which he resides,

The rectifier or wholesale liquor dealer is required to keep the book. It follows, therefore, that the wholesale liquor dealer or rectifier is the person required to verify the return by his oath.

Section 5 of the act of August 2, 1886, provides that every manufacturer of oleomargarine shall keep such books and render such returns, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require.

Section 6 of the act of May 9, 1902, provides that wholesale dealers in oleomargarine shall keep such books and render such returns in relation thereto as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation require.

You will observe that the law relating to manufacturers and wholesale dealers in oleomargarine does not require returns except such as are demanded by the Commissioner of Internal Revenue, and does not require any return to be made under oath. The whole matter of returns and the keeping of books by manufacturers and wholesale dealers in oleomargarine is by the law left to the discretion of the Commissioner of Internal Revenue. Under the authority given in the two sections quoted, the Commissioner, with the approval of the Secretary of the Treasury, has, by regulation, required that manufacturers and wholesale dealers in oleomargarine shall keep certain books and make certain returns, and, in accordance with the discretion vested in him, has allowed these returns to be verified by the oath of a manager or superintendent, duly authorized by an

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instrument in writing, to be filed with the collector of the district, or by some person qualified to so act by duly executed power of attorney.

The Commissioner of Internal Revenue having thus provided by regulations for the making of returns to be verified by one acting under power of attorney, you are authorized to accept such returns. The authority therefor is found in T. D. 281.

All regulations heretofore issued in conflict with the position herein taken are hereby rescinded.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. DAVID H. MOORE,
Collector Internal Revenue, Athens, Ohio.

(T. D. 1047.)

Returns of manufacturers of tobacco and cigars.

The enforcement of T. D. 1039 may be delayed in certain cases.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 29, 1906.

SIR: Your letter of September 21, concerning T. D. 1039, with which you inclosed a copy of power of attorney from one ——— has been considered.

Under the wording of the law relating to the returns made by manufacturers of tobacco and cigars, there seems to be no authority for making any exception in the application of the law as set out in the decision referred to.

Sections 3358 and 3390 provide that the yearly and monthly reports of each manufacturer shall be "verified by his own oath."

I deem it important that this law be enforced as it stands and as construed in T. D. 1039. If there are those who for any reason are not able to comply with the requirements of law relating to the business in which they are engaged or in which they desire to be engaged, it is no fault of this office. It is not desired that hardship should be worked upon any citizen, but the fact that the enforcement of the law may tend to cause inconvenience to persons operating under the law is no good reason why that law should not be enforced. You are advised, however, that in the particular case presented, where the manufacturer of cigars was called away from this country for a period, the returns may be accepted as at present until such time as the manufacturer can make arrangements to comply with the terms of the section under which he operates.

In the case of the manufacturer who is a cripple, the returns can be taken to him for signature and for the purpose of securing his

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affidavit thereto. He may not know anything about the business; and yet he is the manufacturer from whom the Government requires a report under oath. And, under the law, if a false return is made, the consequences must fall upon him and not upon the Government.

In the case in which the manufacturer was taken to a hospital for treatment, if his disease is such as to render him incapable of attending to business the local laws have provided means by which his business can legally be attended to. If he is not so suffering, returns can be taken to him at the hospital for his signature and verification.

In any case where, in your opinion, great hardship might result from an immediate enforcement of this decision, you are hereby given authority to receive returns as at present until such time as the manufacturers may be able, by trade arrangements or otherwise, to place themselves in position to comply with the requirements of the law; but this period of time should not be unduly extended.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. HENRY FINK,
Collector Internal Revenue, Milwaukee, Wis.

(T. D. 1048.)

Denatured alcohol.

Regulations No. 30 prescribe the manner in which alcohol manufactured at a regularly registered distillery may be withdrawn from bond and denatured.—Information relative to alcohol produced from grain, fruit, and molasses.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 9, 1906.

SIR: I am in receipt of your letter of the 4th instant, in which you state that you are desirous of ascertaining the particulars in regard to the establishment of one or more plants on your interurban lines of railway running out of Des Moines, said plants to be used in the manufacture of denatured alcohol. You state that you wish to obtain all the information possible. * * *

In reply, you are advised that I have forwarded you, under another cover, regulations Nos. 7 and 30. Regulations No. 7 prescribe the manner of manufacturing alcohol at distilleries operated under Governmental supervision. They apply to distilleries at which either alcohol intended for tax payment or denaturation is manufactured.

Regulations No. 30 prescribe the manner in which alcohol manufactured at a regularly registered distillery may be withdrawn from bond and denatured. These are all the regulations issued by this Department relating to the manufacture of alcohol.

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You will understand that alcohol has always been dealt with by this Bureau as an object of taxation, and that the denatured alcohol law will be dealt with by this Department from an administrative standpoint only.

It is possible that you might secure some information as to the sources and uses of alcohol from the Honorable Secretary of Agriculture. However, I will state that the sources of alcohol heretofore have been grain, fruit, and molasses. According to reports and returns on file in this office, it requires 4½ bushels of fruit, four-elevenths of a bushel of grain, or a little more than 2 gallons of molasses, to produce a gallon of commercial alcohol 188 proof.

The grain used at distilleries at which alcohol is manufactured consists of, approximately, 85 per cent corn and 15 per cent malt and rye. The fruit used in the manufacture of alcohol is usually unfit for commercial purposes. The molasses used is what is known as "black strap," being the very cheapest variety of molasses, such as is used for stock feed on sugar plantations.

I am informed that in Germany potatoes are largely used in the manufacture of alcohol. A bushel of potatoes will produce about four-fifths of a gallon of alcohol, and my opinion is that the cheap varieties, such as are used in the manufacture of starch and such products, are of as much value in the production of alcohol as are the better varieties.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. A. P. CHAMBERLIN, *Des Moines, Iowa.*

(T. D. 1049.)

Denatured alcohol.

Denatured alcohol can not be used in the manufacture of a beverage or anything that can be used as a beverage.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 9, 1906.

GENTLEMEN: Your letter of the 5th instant, in which you ask if I can give you any information as to whether or not an arrangement has been made for using denatured alcohol by perfumers, has been received.

In reply, you are informed that the act of June 7, 1906, known as the "denatured alcohol law," provides that alcohol withdrawn from bond free of tax must be denatured in such a manner as to destroy its character as a beverage and render it unfit for liquid medicinal purposes. It is evidently the intent and purpose of this law that tax-free alcohol can not be used in the manufacture of a beverage or anything that can be used as a beverage. It is therefore held

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by this office that alcohol withdrawn from bond under the act in question can not be used in the manufacture of such articles as perfumery.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———, *Philadelphia, Pa.*

(T. D. 1050.)

Certified copies from list of special-tax payers—Scope of act of June 21, 1906.

The act of June 21, 1906, providing for the giving out of certified copies by collectors to prosecuting officers does not affect the operation of the regulations which prohibit collectors from giving out information from their records in any other manner, or from testifying orally in regard thereto. This act simply emphasizes the regulations referred to, and they remain in force with the exception specifically provided for by this act.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 12, 1906.

SIR: In your letter of the 4th instant, referring to the act of June 21, 1906, amending section 3240, Revised Statutes, and providing for the furnishing of certified copies from the record containing the alphabetical list of special-tax payers in each collector's office to prosecuting attorneys of any State, county, or municipality upon application to the collector, you say that this act of Congress, it is contended by the local authorities, "takes the collector out of the regulations promulgated by the Commissioner not to furnish copies or testify orally respecting official information; that since Congress by an act has given the local courts the benefit of these records thru certified copies, there is no policy to be preserved by which collectors should be restrained or prevented from testifying orally in respect thereto."

It is the opinion of this office that the act of June 21, 1906, simply emphasizes the Commissioner's regulations referred to, and that Congress intended not that collectors should be authorized to testify regarding official matters within their knowledge, but to give the prosecuting officers of the local courts the opportunity to present to the courts so much of the information in the possession of the Government as is contained in the record of which a certified copy may be made.

The regulations remain in force, there being no reason why a collector should be required to testify orally in court since Congress by the act of June 21 has specified precisely the information that

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shall be given out from the records of the collector's office. The certified copy provided for is in lieu of the testimony of the collector. Had Congress desired that other information be given out by collectors, that intent would have been exprest in the act mentioned.

From an administrative point of view, it would be an unwise policy to allow a collector of internal revenue to be summoned at the will of any prosecuting officer in a State court, and thus prevented, in some instances possibly for days at a time, from attending to the duties of his office. It was this consideration, probably, that induced Congress to pass the law in its present shape allowing certified copies to be made from the alphabetical list of special-tax payers by collectors for the use of State prosecuting officers.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. HARRY SKINNER, *United States Attorney, Greenville, N. C.*

(T. D. 1051.)

Denatured alcohol.

Permit to deal in denatured alcohol may be issued to a liquor dealer, but he can not store the denatured product on the same premises in which fermented liquors or distilled spirits are kept or stored. He must either sell the denatured product direct from the distillery at which it is denatured, or from a warehouse in which neither distilled spirits, wines, nor malt liquors are kept.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 13, 1906.

SIR: I am in receipt of your letter of the 11th instant, in which you state that you are a wholesale liquor dealer, but carry no stock at your present address; that you keep no store, simply an office. You ask if, under the recent law pertaining to the sale of denatured alcohol, you can sell denatured alcohol from warehouse or from dock, provided you secure permit for making such sale.

In reply, you are informed that the fact that you are a qualified liquor dealer does not bar you from securing permit to sell denatured alcohol. Permit to deal in denatured alcohol may be issued to a liquor dealer, but he can not store the denatured product on the same premises in which fermented liquors or distiled spirits are kept or stored. He can not store it at his place of business if he keeps his stock of liquors there; neither can he keep it stored in a warehouse not connected with his store or office but in which his stock of liquors is kept. He must either sell the denatured product direct from the distillery at which it is denatured, or from a warehouse in which neither distilled spirits, wines, nor malt liquors are kept.

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By referring to section 59 of regulations No. 30, being the regulations and instructions concerning denatured alcohol, you will note the class of premises upon which denatured alcohol can not be kept or stored.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———.

(T. D. 1052.)

Denatured alcohol.

Under the act of June 7, 1906 (regulations No. 30), alcohol may be withdrawn from bond, properly denatured, and used in the manufacture of vinegar.—The denaturants to be used in the several industries in which denatured alcohol will be used have not yet been past upon.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 22, 1906.

SIR: Your letter of the 12th instant to the Hon. Thomas F. Marshall, M. C., in which you ask in reference to denatured alcohol, has been referred by Mr. Marshall to this office for answer. You ask whether or not you can make arrangements to ship alcohol in sealed cars for the manufacture of vinegar at Superior or Duluth. You also ask what is used to "denaturalize" alcohol.

In reply, you are informed that under the act of June 7, 1906, alcohol may be withdrawn from bond, free of tax, to be used in the arts and industries and in the production of light, heat, and power, provided it is denatured in such a manner as to destroy its character as a beverage and render it unfit for liquid medicinal purposes.

This office holds that alcohol may be withdrawn from bond, properly denatured, and used in the manufacture of vinegar. * * * Alcohol intended for denaturation must be manufactured at a regularly registered distillery, constructed and operated in exactly the same manner as are distilleries at which alcohol intended for tax payment is manufactured. It must be entered in bond and the distiller must provide a warehouse for denaturing purposes to which he can transfer alcohol intended for denaturation. You may either set up and operate a distillery yourself, at which you can manufacture an denature alcohol under governmental supervision, or you may secure your denatured alcohol from some distiller who has qualified as a denaturer.

By reference to regulations No. 30, Part III, you will note that special denaturants are provided for, said denaturants to be suitable for the use to which the alcohol is intended. In view of the fact that the agents intended for complete denaturation (see section 26

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of the regulations) are benzine and methyl alcohol, it is presumed that alcohol intended for the manufacture of vinegar will have to be specially denatured.

This office has not as yet past upon the special denaturants to be used in the several industries in which denatured alcohol will be used, but is ready to consider any formula that any manufacturer may wish to submit for the special denaturation of alcohol.

You will note by reference to section 30 that there are more restrictions in the case of specially denatured alcohol than there are in the case of completely denatured alcohol, but these restrictions do not add to the cost of the alcohol and are intended simply to safeguard the revenue. Under these regulations you can have specially denatured alcohol shipped to any part of the United States to which you may want it for use in any of the industries in which the law authorizes the use of denatured alcohol.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. H. O. BARLOW, *Gwinner, N. Dak.*

(T. D. 1053.)

Denatured alcohol.

Section 99 of regulations No. 30 refers to manufacturers using specially denatured alcohol only.—As to manufacturers being required to secure permit and keep a record.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 22, 1906.

GENTLEMEN: I am in receipt of your letter of the 19th instant, in which you call my attention to section 99 of regulations No. 30, and ask whether said section was meant to refer to persons using regularly denatured alcohol, or whether it refers to persons using specially denatured alcohol only.

In reply, you are informed that section 99 refers to manufacturers using specially denatured alcohol only. Manufacturers using completely denatured alcohol are not required to secure permit unless they use as much as 50 gallons a month. (See secs. 75 and 76.)

When a manufacturer uses as much as 50 gallons of completely denatured alcohol a month, he is required to secure permit and keep the alcohol stored in a room designated for that purpose, but he is not required to keep any record of the alcohol received and used or the goods manufactured by him. The only conditions under which a manufacturer using completely denatured alcohol is required to keep a record showing the alcohol received and disposed of, are when

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such manufacturer recovers alcohol and either restores it at his own plant to a condition suitable for reuse or transfers it to a restoring and redenaturing plant. In such cases he is required to keep the records prescribed for manufacturers in Parts IV and V of the regulations.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———, *New York.*

(T. D. 1054.)

Distillers' warehousing bonds.

Ruling contained in T. D. 1040 modified.—To what extent surety companies may be accepted on the bonds of distillers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 26, 1906.

SIR: After further consideration of the matter of accepting warehousing bonds of distillers signed by surety companies, where the total bonded liability of the surety company upon the bond of any one distiller may exceed the company's assets, I have decided to modify the ruling contained in T. D. 1040 to this extent:

1. Where a distiller or distilling company operates more than one distillery, a surety company may be accepted on the warehousing bonds of that distiller for the spirits in warehouse at each distillery to an amount not exceeding the assets of the surety company liable to execution. If, however, the distiller has spirits warehoused upon any one of his distillery premises upon which the tax amounts to more than the assets of the surety company, then the surety company will be limited in its bonded obligation for the spirits there warehoused to the amount of its assets, whether the spirits bonded be contained in one or more of the warehouses at that distillery. But the amount of the bonded liability of a surety company at one distillery will not affect the acceptance of its bonds for spirits at another distillery, altho both distilleries belong to and are operated by the same distiller.

2. Transportation or export bonds may be accepted from the surety company even tho the total amount of its warehousing bonds at any one distillery owned by the distiller for whom it is furnishing the transportation or export bond is equal to the amount of its assets.

In determining the amount of the warehousing bonds which may be given by a surety company for any one distiller or distilling company, the basis of such determination should be the assets of the surety company liable to execution, as shown by the regular quarterly report of such company required by law to be made to the

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Attorney-General of the United States, and not the amount which appears upon Form 400 as sworn to by the agents or attorneys in fact of the surety company.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. P. L. GOLDSBOROUGH,
Collector Internal Revenue, Baltimore, Md.

(T. D. 1055.)

Denatured alcohol.

Denatured alcohol may be used for manufacturing varnishes, in accordance with regulations No. 30.—Storerooms, how constructed.—Application blanks for permits; how and when to be obtained.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 26, 1906.

GENTLEMEN: I am in receipt of your letter of the 25th instant, in which you state that you are engaged in the manufacture of varnishes, and that it is your intention to use in certain grades of varnish denatured alcohol as prescribed by law. You state that your plant is a fireproof building, and that at said plant you will use denatured alcohol solely for the purpose of manufacturing varnishes. You state that you propose to set aside a room in your factory for the storing of this denatured alcohol; that you propose to construct a wire cage in such a manner that there will be but one door, and that the door can be properly locked according to the regulations, and you ask whether a room so constructed will comply with all the requirements of the law.

I presume that it is your intention to use alcohol completely denatured, in accordance with the provisions of section 26 of regulations No. 30, and that the room about which you inquire is the storeroom provided for in section 75 of said regulations. If I am correct, you are advised that you can, under the regulations, construct a denatured alcohol storeroom prescribed by section 75 of regulations No. 30 of wire, provided you construct it in such a manner that it will be secure and that the door thereto can be securely locked.

It is not practicable to prescribe with particularity specifications for constructing the storerooms required of manufacturers using denatured alcohol, but the question of whether or not a particular storeroom is secure must be and will be left to an extent to the local officer. The storeroom must in each case be accurately described in the application for permit, so that this Department may be fully put on notice as to the character of the room in which it is proposed to store denatured alcohol.

* * * * * * *

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———, *New York.*

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(T. D. 1056.)

Denatured alcohol.

Denatured alcohol may be used in the manufacture of dyestuffs under the regulations.—All distilleries at which alcohol, either for denaturation or tax payment, is manufactured must be under surveillance of Government officers under existing laws.—The Commissioner of Internal Revenue will consider any formula for special denaturation that may be submitted.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 30, 1906.

SIR: I am in receipt of your letter of the 24th instant, in which you state that you understand that this Department has charge of regulating the manufacture of denatured alcohol, etc. You state that your "attention has been called to the fact that certain restrictions have been placed around its operation that to a layman anyway, or an ordinary business man, appear to have the effect of nullifying what was supposed to be, by the general public at least, the intent and purpose of the law when passed."

You state that you are interested in cheap alcohol as a necessary solvent in the manufacture of dyestuffs, chemicals, etc.; that you are large users of such dyes, and that you and others interested in the use of dyestuffs in the textile industries were under the impression that the free-alcohol bill would in a measure cause the establishment in this country of large institutions for the manufacture of dyestuffs and chemicals, but you state that you understand that with the restrictions the Government has placed "around the operation of the law it simply will result in making alcohol too high priced for such purposes."

Particularizing as to restrictions, you state:

1. We understand that the manufacture of denatured alcohol will be confined to communities provided with bonded warehouses, which means the distilleries of the United States, or where they are located at the present time. It further means that it will throw the business in the hands of a trust or combination, which will further tend to hold up prices.

2. We also understand that your Department provides for the addition of 10 per cent wood alcohol to denaturalize the grain alcohol, when a much less quantity would answer the purpose, and the effect is to increase the cost by that much.

Replying to the first objection, I respectfully call your attention to the last clause of the first paragraph of section 1 of the denatured alcohol law, which states:

Such denaturing to be done upon the application of any registered distillery in denaturing bonded warehouses specially designated or set apart for denaturing purposes only, and under conditions prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

You will note that the law provides that the denaturing of alcohol is to be done by the proprietor of a registered distillery in a denaturing bonded warehouse specially provided for the purpose.

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Any person, or association of persons, who has qualified as a distiller by constructing a distillery in accordance with the existing laws and regulations, and by giving the necessary bond, can also qualify as a denaturer of alcohol by constructing a warehouse in which to denature alcohol and by giving bond as a denaturer. The law relating to distilleries, and which has been in force for years, fixes no limitations upon the size of distilleries at which alcohol can be manufactured. There are something over one thousand distilleries in the United States now at which the daily output is less than 30 gallons of distilled spirits. It is true that these distilleries are not engaged in the manufacture of alcohol as known to the commercial world, but make what is ordinarily known as whisky or brandy. But so far as the laws, or the administration of the laws, are concerned, there is nothing to prevent them from manufacturing commercial alcohol.

This Department will after January 1 next continue, as it has in the past, to permit the establishment of any kind of a distillery authorized by law, and as the law authorizes the construction of any kind of a plant at which ethyl alcohol can be manufactured, and permits the use in the manufacture of ethyl alcohol of any raw material containing sugar, starch, or similar fermentable vegetable matter capable of producing ethyl alcohol, the alcohol industry can take such range and scope as economic conditions and business demands may justify.

Furthermore, this office will permit the establishment of a denaturing bonded warehouse and will permit the denaturation of alcohol on the premises of any registered distiller who may desire to manufacture alcohol of such degree of proof as can under the regulations be denatured, to wit, 180 degrees. Large and small distilleries will be treated exactly alike.

If the demands of business call for the establishment of distilleries in localities in which they are not now operated, this Department will go as far as the law authorizes in permitting the establishment of such distilleries. Under the existing laws, the Government, thru this Department, must exercise such surveillance over the manufacture of alcohol as will safeguard the revenue. Internal-revenue officers must have supervision at all distilleries at which alcohol either for denaturation or tax payment is manufactured, but the distiller does not pay the expense of this surveillance. The Government stands every cent of the cost of supervision. This being the case, the supervision can not have any effect upon the establishment of distilleries for legitimate purposes. It can not deter an honest man from going into the business of manufacturing alcohol, either for the purpose of denaturation or for tax payment. If, therefore, alcohol withdrawn from bond free of tax, under the provisions of the act of June 7, 1906, goes into the market with absolutely no burdens except the actual cost of production, it would seem that that would be as much as could be asked.

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As to the use of alcohol in the manufacture of dyes, this office holds that alcohol can be withdrawn from bond free of tax and denatured for use in the manufacture of anything that does not come within the purview of the terms "beverage or a liquid medicinal preparation." Therefore, alcohol can be used in the manufacture of dyestuffs.

As to your second cause of complaint, * * * I respectfully invite your attention to sections 26 and 58, and to the whole of Part III, sections 79 to 110, inclusive.

Section 26 prescribes that the agents used for complete denaturation shall be methyl alcohol and benzine; approximatety 9.05 per cent of methyl alcohol and .45 of 1 per cent of benzine. Section 58 prescribes that alcohol denatured as provided in section 26 shall be classed as *completely* denatured alcohol, and that alcohol denatured in any other manner shall be classed as *specially* denatured alcohol.

Section 79 authorizes special denaturants, and section 80 expressly states that the Commissioner of Internal Revenue will consider *any* formula for *special* denaturation that may be submitted. It restricts the special denaturants to one for each class of industries, unless it should be shown that there are good reasons for additional special denaturants for any industry.

The rest of Part III deals with the manner of obtaining permission to use special denaturants and the use of such special denaturants. Manufacturers and others desiring to use special denaturants are expressly invited to submit any formula they may desire for special denaturation, and it is expected that manufacturers will avail themselves of the opportunity.

There are more restrictions thrown around the use of specially denatured alcohol than apply to completely denatured alcohol, but the Government pays the cost of these restrictions. They cost the manufacturer nothing and are intended as a safeguard to the revenue and a protection to honest manufacturers of and dealers in tax-paid distilled spirits. If they add nothing to the cost of the alcohol it is difficult to understand what objections the users of the alcohol could urge to them.

In view of the above, it ought to be plain that so far as this Department is concerned the American farmer has the same opportunity of converting into alcohol the "products of his field" as has the German farmer mentioned in your letter. It is simply a question of whether or not the American farmer wants to enter into the manufacture of alcohol.

As to the manufacturer of dyes, it is simply a question of whether or not he wants to go to the trouble of finding and submitting a special denaturant suitable for use in his industry, and which this Department thinks can safely be adopted as a denaturant.

If the farmer finds that as a business proposition the manufacture of alcohol for domestic and industrial uses is, like the manufacture

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of meal and flour, a good thing, then there exists absolutely no reason, so far as the internal-revenue laws are concerned, for his not going into the business. In view of the fact that distillers only can manufacture alcohol and that users of alcohol are forced to purchase their alcohol from distillers, just as consumers of woolen goods have to go to the woolen mills for their woolen goods, it is difficult to understand, even if the law requiring the denaturing of alcohol to be done by distillers were not in the way, what difference it would make to the manufacturer whether the alcohol is denatured before or after its purchase.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. W. L. HIXON, *Mankato, Minn.*

(T. D. 1057.)

Denatured alcohol—Specifications for methyl alcohol and benzine, submitted for approval as denaturing materials.

[Int. Rev. Circular No. 680.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 30, 1906.

The second paragraph of section 1 of the act approved June 7, 1906, for the withdrawal from bond, tax free, of domestic alcohol to be rendered unfit for beverage or liquid medicinal purposes by the admixture of denaturing materials, provides as follows:

> The character and quantity of the said denaturing material and the conditions upon which said alcohol may be withdrawn free of tax shall be prescribed by the Commissioner of Internal Revenue, who shall, with the approval of the Secretary of the Treasury, make all necessary regulations for carrying into effect the provisions of this Act.

Pursuant to this authority, and in conformity with the terms of section 26 of regulations No. 30, the following specifications are prescribed for methyl alcohol and benzine submitted for approval as denaturing materials:

METHYL ALCOHOL.

The methyl alcohol submitted must be partially purified wood alcohol obtained by the destructive distillation of wood. It must conform to the following analytical requirements:

Color.—This shall not be darker than that produced by a freshly prepared solution of 2 c. c. of N/10 iodine diluted to 1,000 c. c. with distilled water.

Specific gravity.—It must have a specific gravity of not more than 0.830 at 60° F. (15.56° C.), corresponding to 91° of Tralles' scale.

Boiling point.—100 c. c. slowly heated in a flask under conditions as described below must give a distillate of not less than 90 c. c. at a temperature not exceeding 75° C. at the normal pressure of the barometer (760 m. m.).

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One hundred c. c. of wood spirit are run into a short-necked copper flask of about 180–200 c. c. capacity, and the flask placed on an asbestus plate having a circular opening of 30 m. m. diameter. In the neck of this flask is fitted a fractionating tube 12 m. m. wide and 170 m. m. long, with a bulb just 1 centimeter below the side tube, which is connected with a Liebig's condenser having a water jacket not less than 400 m. m. long. In the upper opening of the fractionating tube is placed a standardized thermometer, so adjusted that its mercury bulb comes in the center of the bulb. The distillation is conducted in such a manner that 5 c. c. pass over in one minute. The distillate is run into a graduated cylinder, and when the temperature of 75° C. has been reached at the normal barometric pressure of 760 m. m. at least 90 c. c. shall have been collected. Should the barometer vary from 760 m. m. during the distillation 1° C. shall be allowed for every variation of 30 m. m. For example, at 770 m. m. 90 c. c. should have distilled at 75.3°, and at 750 m. m. 90 c. c. should have distilled at 74.7° C.

Miscibility with water.—It must give a clear or only slightly opalescent solution when mixt with twice its volume of water.

Acetone content.—It must contain not more than 25 or less than 15 grams per 100 c. c. of acetone and other substances estimated as acetone when tested by the following method (Messinger):

Determination of acetone.—1 c. c. of a mixture of 10 c. c. wood naphtha, with 90 c. c. of water is treated with 10 c. c. of double normal soda solution. Then 50 c. c. of N/10 iodine solution are added while shaking, and the mixture made acid with dilute sulphuric acid three minutes after the addition of the iodine. The excess of iodine is titrated back with N/10 sodium thiosulphate solution, using a few drops of starch solution for an indicator. From 15.5 to 25.8 c. c. of N/10 iodine solution should be used by the spirit.

The solution should be kept at a temperature between 15° and 20° C.

Calculation: X=grams of acetone in 100 c. c. of spirit.
Y=number of c. c. of N/10 iodine solution required.
N=volume of spirit taken for titration.

$$\text{Then, } X=\frac{Y \times 0.096672}{N}$$

Esters.—It should contain not more than 5 grams of esters per 100 c. c. of spirit, calculated as methyl acetate and determined as follows:

Five c. c. of wood spirit are run into a flask, and 10 c. c. normal sodium hydroxide free from carbonates are added and the flask connected with a return condenser and boiled for two hours. Instead of digesting at boiling temperature, the flasks may be allowed to stand over night at room temperature and then heated on a steam

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bath for thirty minutes with an ordinary tube condenser. The liquid after digestion is cooled and titrated with normal sulphuric acid, using phenolphthalein as an indicator.

Methyl acetate, grams per 100 c. c. of spirit =

$$\frac{.074 \times \text{c. c. of N/ soda required} \times 100}{\text{c. c. spirit taken.}}$$

Bromine absorption.—It must contain a sufficient quantity of impurities derived from the wood, so that not more than 25 c. c. or less than 15 c. c. shall be required to decolorize a standard solution containing .5 gram of bromine, as follows:

The standard bromine solution is made by dissolving 12.406 grams of potassium bromide and 3.481 grams of potassium bromate (which is of tested purity and has been dried for two hours at 100° C.), in a liter of water. Fifty c. c. of the standard solution containing .5 gram of bromine are placed in a glass-stoppered flask having a capacity of about 200 c. c. This is acidified by the addition of 10 c. c. of diluted sulphuric acid (1 to 4), and the whole shaken and allowed to stand a few minutes. The wood alcohol is then allowed to flow slowly into the mixture, drop by drop from a burette until the color is entirely discharged. The temperature of the mixture should be 20° C.

In addition to the above requirements, the methyl alcohol must be of such a character as to render the ethyl alcohol with which it is mixt unfit for use as a beverage.

BENZINE.

The benzine submitted for approval must be a hydrocarbon product derived either from petroleum or coal tar. If derived from petroleum, it must have a specific gravity of not less than .800. If derived from coal tar, it must have a boiling point of not less than 150° or more than 200° C.

It must be of such a character as to impart a decided odor to ethyl alcohol when mixt with it in the proportion of one-half of one part by volume.

JOHN W. YERKES, *Commissioner.*

Approved:

C. H. KEEP, *Acting Secretary of the Treasury.*

(T. D. 1058.)

Denatured alcohol.

Denatured alcohol can not be shipped in tank cars. It must be denatured at the distillery where produced and drawn off and shipped in packages specially provided for that purpose. Retailers can purchase denatured alcohol from the distillers direct or from wholesalers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 30, 1906.

SIR: I am in receipt of your letter of the 27th instant, in which, among other things, you ask that I inform you whether or not western

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distillers can ship completely denatured alcohol to the east in tank cars or in 135-gallon packages and rebarrel in common barrels at eastern points, such as New York, Boston, etc., and then ship to their wholesale eastern customers, so as to compete in matters of freight and cost of packages with the eastern distillers using molasses at the Atlantic seaboard cities.

In reply, you are informed that denatured alcohol can not be shipped in tank cars. Under the law and regulations alcohol must be denatured at the distillery at which it is produced. It must be drawn off and shipped in packages especially provided for that purpose, said packages ranging in size from 5 gallons to 135 gallons. These packages can not be broken, but must be sold in exactly the same condition as they are received by the wholesale dealer.

You ask also, "Can retailers of completely denatured alcohol buy in any package from 5 gallons to 135 gallons of the distiller and then fill their bottles, etc., and sell them at their stores wherever these may be?"

In reply, you are advised that retailers can purchase denatured alcohol from distillers direct or from wholesalers, just as they may see fit, and they can buy in stamped packages of any size that suits their business, from 5 to 135 gallons. They can buy any quantity that their business may demand and they can sell at retail—that is to say, in quantities of less than 5 gallons, in bottles, jugs, demijohns, or such other receptacles as they may desire to use.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———, *Winchester, Mass.*

NOTE.—The portion of this letter relative to transportation of denatured alcohol in tank cars is based upon the general revenue law as it now stands. It is believed by this office that in view of the lessening of transportation charges thru the use of tank cars for moving both undenatured and denatured alcohol, proper changes would be made in the law by the Congress upon presentation of the facts. Tank cars are used very largely abroad for the transportation of both forms of alcohol, and this office knows no reason why, under proper legislation and controlling regulations, their use should not be adopted here for the benefit of the trade and consumers.

(T. D. 1059.)

Denatured alcohol.

Storage of denatured alcohol in a building part of which is a wholesale liquor dealer's establishment.—Diagram must be furnished.—If there are no interior means of communication, and in going from the manufacturer's premises to those of the dealer it is necessary to go upon a public highway, denatured alcohol may be brought upon the manufacturer's premises for use in manufacturing processes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 31, 1906.

GENTLEMEN: I am in receipt of your letter of the 27th instant, in which you state that you have carefully read the regulations and

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instructions concerning denatured alcohol, and you call my attention to section 59, wherein it is provided that denatured alcohol can not be stored upon certain premises. You state—

We are located at ——— street, a five-story brick building, running through to ——— street, with entrances on either side. For a number of years we have manufactured shellac varnishes on the second floor of this building, and desire to know whether we will be permitted to use denatured alcohol on our premises for the purpose of the above-mentioned article, though there are on the ground floor importers and bottlers of Rhine wines and clarets and so on, and a wholesale whisky house. The entrances to our premises, however, are absolutely separate, and we have no connection whatsoever with any house dealing in the articles mentioned in section 59.

In reply, you are advised that in the administration of the denatured-alcohol law the question of whether or not two or more parts of a building constitute the same premises will, in a measure, have to be determined by the local officer, all of the facts and circumstances in each case having been taken into consideration. You will be required to submit with your application for permit a diagram of that part of the building used by you, and this diagram must accurately show the connection of your part of the building with the other part and with the adjacent buildings.

As a general proposition I will say that if there are no interior means of communication between your premises and those of the wholesale liquor dealer, and if in going from your premises to those of the liquor dealer it is necessary to go out upon the public highway (sidewalk, alley, or street), there will be no objection to your bringing denatured alcohol upon your premises and using it in manufacturing processes.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———, *New York.*

(T. D. 1060.)

Manufacture of denatured alcohol in Indian Territory.

Whether denatured alcohol can be manufactured in the Indian Territory is a matter for the Secretary of the Interior to decide, the administration of the prohibitory law in that Territory devolving upon that Department.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 1, 1906.

SIR: I am in receipt of your letter of the 27th ultimo, in which you ask me to furnish you with information as to the operation of a distillery, and also to advise you if there are any special regulations which prevent the manufacture of alcohol by a distillery in the Indian Territory.

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In reply, you are informed that alcohol intended for denaturing purposes must be manufactured at a regularly registered distillery, set up and operated in accordance with regulations No. 7. The same law and regulations apply to the construction and operation of distilleries at which alcohol intended to be denatured is manufactured as apply to distilleries at which alcohol is manufactured for purposes of tax payment.

This Department has nothing to do with the law prohibiting the manufacture, sale, etc., of intoxicating beverages in the Indian Territory, to wit, section 1 of the act of March 1, 1895. The administration of that law devolves upon the Interior Department. I would therefore suggest that you take the question of the manufacture of denatured alcohol up with the Honorable Secretary of the Interior.

So far as this Department is concerned as to the establishment of a distillery for the manufacture of denatured alcohol, if it is held by the Interior Department to be permissible under the special prohibitory law above mentioned, the establishment of such distillery will be permitted.

You will understand, of course, that alcohol, after it has been manufactured and placed in a warehouse, is an intoxicating beverage and remains such until it has been denatured, and that it is treated by this Department as distilled spirits until it has been denatured, no matter what the purpose may be for manufacturing the alcohol.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———, *Tulsa, Ind. T.*

(T. D. 1061.)

Claims for refund of legacy taxes.

Application will be made for a rehearing of the case of Eidman *v.* Tilghman in the Supreme Court. Claims coming under that decision will be held without action pending result of application.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 3, 1906.

SIR: In your letter of the 31st ultimo you refer to some constituents of yours who have claims pending in this Bureau for the refunding of taxes paid under the inheritance-tax law, the claims being governed by the decision of the Supreme Court in the case of Eidman *v.* Tilghman, and you ask what steps are necessary to have the tax refunded and whether any blanks are furnished by this Department.

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The letter from this Bureau which you attached to your letter refers to the claim of ——— ———.

In reply, you are advised that this claim, with similar ones, will be still further held without action by this Bureau, pending the result of an application for a rehearing in the Tilghman case, the Department of Justice having indicated its intention to make application for such rehearing at an early date.

If the final decision in the Tilghman case is against the Government, all claims coming under that decision will be acted upon immediately, without any steps being taken by the claimants. If, however, any claim has been acted upon adversely, it will be reopened upon a petition from the claimant asking that such action be taken.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———.

(T. D. 1062.)

Denatured alcohol.

Location and construction of denaturing bonded warehouses, and kind of packages required for denatured alcohol.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 6, 1906.

SIR: In reply to the inquiries contained in your letter of the 1st instant, you are informed—

1. That denaturing bonded warehouses may be established by "bricking," or partitioning off a portion of the distillery bonded warehouse, provided the same is constructed as required in section 1 of regulations No. 30, and is discontinued as a part of the distillery warehouse.

2. That alcohol varying in proof, but not below 180 degrees proof strength, may be removed to such denaturing bonded warehouse, and may there be reduced to the desired proof not below that above stated.

3. As to the kind of packages to be used for denatured alcohol, you are informed that such packages should be so constructed as to admit of the required marks, brands, and stamps being placed thereon, and if metallic cans or drums are used, the same should be securely incased in wood or constructed in conformity with circular 678.

4. Denaturing bonded warehouses, and free warehouses for the storage of denatured alcohol, may be under the same roof, provided

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the former is on and the latter off of the distillery premises, and the denaturing bonded warehouse is so partitioned off that there is no opening or means of communication between the two warehouses.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. P. G. RENNICK, *Collector Fifth District, Peoria, Ill.*

(T. D. 1063.)

Testing bottles for containing bottled-in bond spirits.

[Circular No. 681.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1906.

To collectors of internal revenue:

Recent reports received at this office show that bottled-in-bond spirits are being placed on the market in bottles stamped and sold as containing 1 quart, which in some instances are found to be short in measure as much as 2 ounces to a bottle, the stamp of the Government thus being made to show a quantity of spirits in such bottles in excess of the actual contents of the bottles.

In view of this fact, every distiller who is engaged in bottling spirits in bond will, without unnecessary delay, provide himself with a standardized glass graduate, cylindrical in shape, with lip so fashioned that liquor may be poured from the instrument into a bottle without waste, and suitable for the purpose of determining the capacity of the various bottles used by him for the purpose indicated, and in order to avoid delay in bottling, should see that the bottles delivered in the warehouse are of the capacity required by this regulation.

Storekeepers on duty at bottling warehouses will, whenever a supply of bottles is brought into the warehouse, test a number of each size by means of the instrument mentioned before allowing any to be filled, and where it is found that they, or any of them, are of less capacity than that required by this regulation, decline to allow any of them to be used until the entire lot shall have been removed from the warehouse and all bottles not of the required capacity excluded therefrom.

As this office is informed that glass manufacturers will not contract to furnish bottles of exact size, it is held that where quarts do not vary in capacity more than 1 ounce from the standard of 32 ounces, and other sizes in like proportion, no notice need be taken of such variation.

Distillers are advised that the instrument referred to may be procured from any dealer in scientific glassware.

Collectors will acknowledge receipt of this circular and see that the instructions herein contained are observed.

JOHN W. YERKES, *Commissioner.*

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(T. D. 1064.)

Use of wholesale liquor dealers' stamps.

[Circular No. 682.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1906.

To collectors of internal revenue and other internal-revenue officers:

The abnormal increase in the use of wholesale liquor dealers' stamps has caused this office to make careful inquiry as to the cause of such increase, with the result that it is found that stamps of this class, which were intended for use on packages filled on the premises of wholesale liquor dealers, are in many instances being used, apparently, for no other purpose than to substitute such stamps for other stamps affixt to original packages of distillers, rectifiers, and wholesale liquor dealers.

Collectors will, therefore, on and after January 1, 1907, decline to issue a wholesale liquor dealers' stamp for use on any package not filled on the premises of a wholesale liquor dealer, or for use on any unbroken package bearing the marks, stamps, and brands required by law.

JOHN W. YERKES, *Commissioner.*

(T. D. 1065.)

Oleomargarine—Illicit manufacture.

Under section 17, act of August 2, 1886, all machinery, etc., and personal property used in illicit manufacture of oleomargarine are forfeitable, but not real estate.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1906.

SIR: Your letter of the 5th instant has been received, inclosing a report made to you by your division deputies ——— of the facts ascertained by them showing the illicit manufacture of colored oleomargarine by ———, a retail dealer in oleomargarine, and of the seizure of all the oleomargarine found upon the premises.

You refer to section 17 of the act of August 2, 1886, and you ask whether, in the opinion of this office, this section would authorize forfeiture of the house or premises upon which the manufacture of this product was carried on.

My reply is in the negative. It is held by this office that under that section all machinery, tools, implements, apparatus, and personal property used in the business are forfeitable, but not the real estate.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. JOS. A. CRAFT, *Collector Fifth District, Louisville, Ky.*

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(T. D. 1066.)

Storage of specially denatured alcohol.

Specially denatured alcohol must be stored upon the premises upon which it is to be used in manufacturing processes and can not be removed from those premises for any purpose after it has been stored thereon.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 10, 1906.

SIR: Replying to that part of your letter of the 26th ultimo, in relation to the location of the storeroom proposed as a storage place for denatured alcohol by the ——— Company, you are advised that this office holds that specially denatured alcohol must be stored upon the premises upon which it is used in manufacturing processes, and that it can not be removed from those premises for any purpose after it has been stored thereon.

If a manufacturing establishment covers several city blocks, or parts of blocks, as you say is the case of the ——— Company, and public thorofares separate parts of the premises, the storeroom for denatured alcohol must be located upon that part of the premises where it is used, and can not be located with reference to the part of the premises upon which the alcohol is to be used in such a manner as would necessitate the taking of the denatured alcohol over a public highway when being removed from the storeroom for use in manufacturing processes.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. H. C. H. HEROLD, *Collector Internal Revenue, Newark, N. J.*

(T. D. 1067.)

Denatured alcohol.

No data for basing an estimate of the quantity of industrial alcohol used annually The denatured alcohol law does not change existing laws in regard to operation of distilleries. Government supervision necessary.—No objection to a farmer manufacturing alcohol in his "back yard" if he wishes to establish a distillery there. Special interests not favored under the internal-revenue law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 12, 1906.

SIR: Your letter of the 8th instant has been received. * * * You ask me to answer a number of questions.

First. You ask "How many gallons will approximately be needed in the industries for 1907?" In reply, I will state that this Department has always dealt with distilled spirits as an object of taxation. Heretofore all spirits going into consumption in a general way have been tax paid. This included spirits used industrially as well as those used as a beverage and in the manufacture of liquid medicinal

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preparations, and there have been no data shown by reports received at this office whereby there could be a segregation of spirits used industrially from those used in other ways; therefore there are no statistics in existence, so far as I am advised, showing the quantity of industrial alcohol used annually in this country. Having absolutely nothing to base an estimate upon, it is not possible for me to make an estimate as to the quantity of denatured alcohol that will be consumed in the industries of this country during the year 1907.

Second. You ask "How many distilleries have applied for permits or are expected to manufacture denatured alcohol." In reply to this, I will state that no formal applications have as yet been made by distillers for approval of denaturing bonded warehouses. Such applications could not be filed, for the reason that proper blanks have not as yet been placed in the hands of collectors. These blanks will be distributed in a short time. At present there are 40 distilleries in the United States manufacturing what might be termed "commercial alcohol." Quite a number of persons have exprest an intention to establish distilleries and engage in the manufacture of alcohol for denaturing purposes, but at this time it is not possible to surmise as to the number of distillers who will engage in the business.

Third. You state—

> That at present regular distilleries only can engage in the manufacture, enabling the whisky trust already to secure practically a monopoly. Is it proposed to ask Congress to let the farmer (as in Germany) and others in on the manufacture of the product? I regret to attack the law, but must if the present law is to stand favoring special interests. Is it proposed to further simplify the law, reducing the manufacture to the easy basis of cheese making, and cut out the ridiculous red tape of the "regulations and instructions?" I regret that I must attack this feature also and show how our people are to be prevented from making simple and cheap fuel by red-tape restrictions, unless assured that a change may be hoped for.

In reply to this, you are advised that this Department does not *make* the law, but endeavors to *administer* it as it is past by Congress. As to what Congress proposes to pass I am not advised.

This office knows of no processes by which alcohol can be manufactured except by distillation, and as "regular" distilleries are the only kind recognized by the law, alcohol manufactured under the supervision of this Department must be manufactured at "regular" distilleries. For your information, however, I will state that there is nothing mysterious or complicated about a "regular" distillery, and that the manufacture of distilled spirits at a "regular" distillery is probably simpler than the "manufacture of cheese."

The internal-revenue laws under which all Government distilleries are constructed and operated are necessarily full of detail, but at the same time these laws are so elastic and comprehensive that no honest man is barred from engaging in the business of manufacturing distilled spirits. There are absolutely no limitations as to the

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size of a distillery that can be operated under the law. There are over a thousand distilleries in operation now at each of which the daily spirit producing capacity is less than 30 gallons. Many of these were set up on an outlay of less than $200. It is true that somewhat more elaborate and expensive machinery is required to produce commercial alcohol than is required to produce 100 per cent spirits, but that is due to the laws of nature and the laws of business and not to the internal-revenue laws. So far as the internal-revenue laws are concerned, either in theory or practise, the smallest and crudest distillery can produce alcohol if, as a business proposition, it is deemed advisable so to do.

The administrative features of the laws relating to the manufacture of distilled spirits and governing the operations of distilleries, and under which the business has grown up, have not been materially changed for thirty years. The small distilleries have always been treated by this Department with the same consideration as the larger ones. The law does not favor one class of distilleries as against another, and if there is such a thing as a monopoly in the whisky business, it is not because of the internal-revenue laws, or the manner in which they have been administered. The denatured alcohol law did not change the existing laws as to the operations of distilleries, but simply provides that alcohol produced at a regularly registered distillery set up and operated under existing laws can be withdrawn from bond free of tax, for use in the arts and industries, provided it is denatured, etc.

This Bureau will endeavor to administer the denatured alcohol law in the same manner it has heretofore administered the law relating to distilled spirits. If a farmer or other person desires to go into the business of manufacturing denatured alcohol, at a plant however small, he will be required to construct his plant in the manner prescribed by the general laws and regulations. He will be required to give a bond, the effect of which is to prevent him from defrauding the Government of the tax on any distilled spirits produced by him. He will be required to establish a distillery warehouse, to deposit the spirits produced by him in this warehouse, to establish a denaturing bonded warehouse, and to tax-pay or denature just as he may wish the alcohol produced by him. All of this will be done under governmental supervision, but the Government pays for this supervision. The manufacturer of alcohol does not bear one cent of it. There is no objection to a farmer manufacturing his alcohol in "his back yard" provided he wants to establish a distillery there.

The interests of the Government and the manufacturers of and dealers in tax-paid distilled spirits will always necessitate such governmental supervision of the manufacture of spirits as will prevent frauds. As long as there is a tax on distilled spirits anything less

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than a complete supervision of *all* distilled spirits produced, whether for tax payment or denaturation, would result in gross frauds on the revenue, and would work hardships on honest dealers in and manufacturers of tax-paid spirits. If you will take the trouble to investigate you will find, in my opinion, that the laws and regulations relating to the manufacture of alcohol in Germany do not differ to any great extent from the laws and regulations in this country, and that so far as the manufacture of denatured alcohol by the American farmer is concerned, it is simply a business proposition, and he will not be greatly deterred from entering into the business by what you are pleased to term "rediculous red tape of the regulations and instructions." The very fact that there are small independent distilleries established and operating all over the country in the manufacture of distilled spirits for beverage purposes ought to be sufficient answer to any claim that the present internal-revenue laws and regulations favor special interests.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———, *New York.*

(T. D. 1068.)

Duties of officers in connection with the manufacture, sale, and use of denatured alcohol.

[Circular No. 683.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 9, 1906.

The following instructions, supplemental to regulations No. 30, relative to denatured alcohol, are published for the information and guidance of collectors of internal revenue and others concerned:

DENATURING BONDED WAREHOUSES.

1. Denaturing bonded warehouses established under the above-named regulations will be under the control of the collector of the district, and will be operated under the supervision of the storekeeper-gauger, or such other officer as may be assigned thereto by the Commissioner of Internal Revenue.

2. Unless the amount of work to be performed is such as requires the assignment of an additional storekeeper-gauger, such work will be performed by the storekeeper-gauger in charge of the distillery to which the denaturing warehouse belongs, and all withdrawals of alcohol from bond for denaturing purposes, and all transfers of alcohol to such denaturing warehouse will be under his immediate supervision.

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3. It will also be the duty of the officer in charge to see that all alcohol and denaturants received at such warehouse are properly stored therein; that the same are properly used and accounted for by the distiller; that the alcohol so received is properly denatured and casked; that the casks are properly gaged, marked, branded, and stamped, and that all requirements of the regulations respecting such warehouse, and the denaturing of such spirits, are fully complied with.

4. Where the denaturing bonded warehouse is connected with a distillery to which an additional storekeeper-gauger, or gauger, is assigned, such officer may, in the discretion of the Commissioner of Internal Revenue, also be assigned to duty at such denaturing warehouse, and the number of officers assigned to any denaturing warehouse, and the compensation allowed such officers, will depend on the demands of the service in each particular instance.

DUTIES OF REVENUE AGENTS, INSPECTORS, ETC.

5. It shall be the duty of all revenue agents, and all division deputy collectors or special employees, and all additional revenue agents or inspectors hereafter appointed under the provisions of section 3 of the act of June 7, 1906, relating to denatured alcohol, to exercise careful supervision over the operations of denaturers of alcohol, dealers in and manufacturers using such denatured alcohol.

6. The premises of all such denaturers, dealers, and manufacturers, and other premises where any considerable quantity of denatured alcohol is used or stored, should be visited frequently and at irregular intervals, with the view of discovering any fraud or irregularity in connection with the manufacture, sale, or storage of such denatured alcohol.

Investigations made in a perfunctory manner will in no instance be tolerated, and any officer or employee who is found to be negligent or inefficient in the discharge of his duties under the law and regulations relating to denatured alcohol will be summarily separated from the service. It is not expected that officers and employees will conduct their investigations in such manner as to annoy or interfere unnecessarily with the business of persons preparing or handling denatured alcohol.

The intention of the law, and of this office, is to place on this business such restrictions only as are necessary to protect the revenue against fraud. Officers, in making their investigations, should keep this clearly in mind. They will, however, see that the law and regulations are faithfully complied with in every instance, and it will be the duty of every person engaged in this business to afford all necessary facilities to the inspecting officers as required by section 77 of the regulations named.

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7. To enable the officers to make the required examinations, collectors will prepare from their records each month lists of all persons who received denatured alcohol during the preceding month, in quantities exceeding 50 wine gallons, and the quantity so received by each.

Division deputies receiving such list must, from time to time, investigate the purchases noted therein, and ascertain whether the alcohol so purchased is being properly used and accounted for. They will note on each such list, and opposite the name of each purchaser visited by them, the date of their examination; and, in preparing their pay account, Form 63½, they will append thereto a statement of the number of denaturers, the number of dealers, the number of manufacturers, and the number of other users of denatured alcohol investigated by them during the month. Such deputies will be held to a strict accountability for any violation of law or fraud on the revenue resulting from failure on their part to make the investigations here ordered. The required list, on which the visits of the deputy are noted, must be returned by that officer to the collector, who will forward the same to the Commissioner of Internal Revenue.

DENATURERS AND WHOLESALE DEALERS TO NOTIFY COLLECTORS OF SHIPMENTS OF COMPLETELY DENATURED ALCOHOL.

8. In addition to the records required to be kept, each denaturer of completely denatured alcohol, and each wholesale dealer in such alcohol will enter on memorandum slips, to be furnished for that purpose, all shipments of such alcohol, specifying the serial numbers of packages, the number of proof gallons, the name and address of the party to whom shipped, and the date of shipment.

A separate slip must be used for *each* shipment; and in case of removals from denaturing bonded warehouses, or from restoring and redenaturing plants such slips will be handed the officer in charge, who will, if found to agree with his records, immediately check and forward the same to the collector.

9. Wholesale dealers may likewise deliver their memorandum slips to any visiting officer, to be verified and forwarded to the collector by such officer. If, however, the dealer's premises are not visited by an officer within ten days after the removal of the alcohol, such memorandum slips must, at or before the expiration of that time, and in no case later than the last day of the month, be forwarded by the dealer to the collector of his district.

SHIPMENT AND RECEIPTS OF DENATURED ALCOHOL TO BE VERIFIED BY COLLECTORS.

10. On receipt of the memorandum slips above described, collectors will, as to all such slips covering consignments in their

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districts, retain and use the same as hereinafter prescribed. They will, however, immediately forward to the proper collectors all slips relating to consignments to other districts, after the same have been verified by them, or by officers thru whom they were received. These memorandum slips are furnished as a convenient means for tracing alcohol transferred from one person to another, in the same or in different districts. Unless previously checked by the receiving officers, the slips should be first assorted with reference to the names of the shippers, and should then be checked, item by item, with the shipper's transcripts. After being so checked, the slips should then be rearranged with reference to the names of the parties (dealers or manufacturers) to whom the alcohol was sold, and when so arranged should be likewise checked with the transcripts furnished by such parties.

11. In cases where the alcohol reported sold and removed is not accounted for by the purchaser as received within a reasonable time after such removal, the collector will deliver to his deputy the memorandum slip showing such removal or shipment. The deputy receiving such memorandum will at once investigate the matter, and in case of alleged nonreceipt by the purchaser the deputy will, if the alcohol was shipped in the same district, obtain from the shipper evidence of shipments, and delivery, if made

If the alcohol so reported shipped is not properly accounted for by the shipper or by the alleged purchaser, or if the alcohol so unaccounted for was shipped from another district, the collector will report the case to the Commissioner of Internal Revenue for his action.

12. In case of loss of denatured alcohol in transit, proof of loss must be furnished by the shipper. Such proof may consist of the sworn statement of the shippers, accompanied by the duplicate bill of lading, and a sworn statement of the agent of the transportation company, setting forth the facts relative to such loss. The evidence so furnished will be submitted to the Commissioner of Internal Revenue, who will, if the facts warrant, authorize the collector to enter proper credit on the shipper's transcript filed in his office.

Where denatured alcohol is alleged to have been lost by accidental fire or other casualty while stored on the premises of any denaturer, dealer, or manufacturer, evidence of such loss must be furnished, and if such evidence is satisfactory to the Commissioner of Internal Revenue, the collector of the district will likewise be authorized to note the proper credit on the records of his office.

JOHN W. YERKES, *Commissioner.*

Approved:

LESLIE M. SHAW, *Secretary of the Treasury.*

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(T. D. 1069.)

Denatured alcohol.

The use of denatured alcohol can not be allowed in the manufacture of flavoring extracts or essences.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 15, 1906.

SIRS: Your letter of the 10th instant, addrest to the honorable Secretary of the Treasury, has been referred to this office for reply. You ask, "Will the new denatured alcohol-law apply to the manufacture of flavoring extracts? Will adding 5 per cent of oil lemon to alcohol be considered as being denatured?"

In reply, you are informed that flavoring extracts or essences, such as extract of lemon, vanilla, etc., while not ordinarily sold or used as beverages, are readily susceptible of being used in this way, and frequently enter as a component part into compounded beverages. They are much better adapted to beverage purposes than most alcoholic liquid medicinal preparations. To allow the use of tax-free alcohol in your line of manufacture, therefore, would undoubtedly lead to serious frauds on the revenues, and gross abuse of the privileges of the law by unscrupulous persons.

I am obliged, therefore, to answer your question in the negative, and to inform you that neither completely nor specially denatured alcohol can be used in the manufacture of flavoring extracts, such as essence of lemon, extract of vanilla, etc., or any similar preparation capable of being used as a beverage.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———.

(T. D. 1070.)

Denatured alcohol.

Alcohol can not be used free of tax in the manufacture of sulphuric ether, which is a "liquid medicinal preparation."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 16, 1906.

SIR: Your letter of the 9th instant has been received, asking for information as to the use of alcohol tax-free in the manufacture of sulphuric ether.

In reply, you are informed that alcohol used for the production of sulphuric ether, which is a liquid medicinal preparation, is expressly excluded from the benefits of the act of June 7, 1906, by the language of the law itself. If you will refer to the debates in Congress at the time of the passage of the act, you will see that the

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Senator in charge of the bill on the floor of the Senate distinctly stated that no other construction could be placed upon the language of the law.

I understand that a considerable part of the ether made by you is used in the arts and for purposes other than medicinal, but it would be impossible for this office to make any distinction between the product as used in medicines and the same product as used for other purposes.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———.

(T. D. 1071.)

Denatured alcohol.

Druggists who carry stocks of liquors and handle the same as beverages, to be treated in exactly the same manner as ordinary liquor dealers, and will not come within the exemption.—Relative to storage of denatured alcohol and keeping record of amount purchased and disposed of.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 17, 1906.

GENTLEMEN: Your letter of the 12th instant, in which you ask in reference to the manner you shall handle denatured alcohol, has been received.

You state that you are a wholesale druggist and have wholesale and retail liquor dealers' "licenses." You state further that your liquor room is in the basement of your main building, and that across the alley from your main building you have a warehouse which you could use for storing denatured alcohol, if it is necessary for you to store it in a separate building, and you ask if you use this warehouse will you be required to have a room especially constructed in which to store the denatured product.

In reply, your attention is called to section 39 of regulations No. 30, which reads as follows:

Neither completely nor specially denatured alcohol shall be kept or stored on the premises of the following classes of persons, to wit: Dealers in wines, fermented liquors, or distilled spirits, rectifiers of spirits, manufacturers of and dealers in beverages of any kind, manufacturers of liquid medicinal preparations, or distillers (except as to such denatured alcohol in stamped packages as is manufactured by themselves), manufacturers of vinegar by the vaporizing process and the use of a still and mash, wort or wash, and persons who, in the course of business, have or keep distilled spirits, wines, or malt liquors, or other beverages stored on their premises, provided that druggists are exempt from the above provisions.

The exempting clause of this section is intended to apply to persons, firms, or companies who as druggists handle distilled spirits in the preparation of medicines, or who sell tax-paid alcohol in the manner in which it is ordinarily sold by druggists. The exemption was not intended to apply to druggists who are also rectifiers or liquor

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dealers and who manufacture or sell beverages made in whole or in part from distilled spirits, wines or malt liquors. Druggists who carry stocks of liquors and handle these liquors as beverages will be treated in exactly the same manner as ordinary liquor dealers, and will not come within the exempting clause of section 59 above quoted.

It is presumed from the statements in your letter that you handle distilled spirits as a beverage and that you are in fact, in the strictest sense of the word, a liquor dealer as well as a druggist. If this is correct, then permit can not be issued to you authorizing you to store denatured alcohol on the same premises upon which your stocks of liquors are stored.

The question whether or not permit can be issued to you to store denatured alcohol in the warehouse "across the alley" from your main building will depend upon whether or not within the true intent and meaning of the regulations said warehouse is a part of the same premises as your main store.

The question of whether or not two buildings or parts of the same building constitute the same premises, will have to be determined in a large measure by the local officers—that is, the collector of internal revenue or his deputy. You should file, with the collector for your district, application for permit to deal in denatured alcohol, submitting therewith diagram of your premises showing the connection between the several buildings and parts of buildings, etc.

You will be required to secure permit as dealer in denatured alcohol, and to keep the books required of such dealers. You can not keep the record of denatured alcohol purchased and disposed of by you on your Forms 52 *a* and 52 *b*, but must keep a separate record showing your transactions in the denatured product.

I have forwarded to you under another cover regulations No. 30. Part 2 relates to the handling of denatured alcohol by dealers.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———.

(T. D. 1072.)

Special tax—Agents of wholesale liquor dealers.

Persons acting for wholesale liquor dealers in taking orders for whisky and receiving a commission on the orders sent in do not thereby involve themselves in special-tax liability if the whisky is shipped by the wholesale liquor dealer directly to the customers ordering, and these agents are not in any way charged for the shipments and are not looked to for pay therefor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 16, 1906.

SIR: Your letter of the 14th instant has been received, submitting the question of the special-tax liability of persons employed by wholesale liquor dealers in other States to take orders for whisky

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and to send these orders in to the wholesale house, they receiving a commission, as you state, "say, of 50 cents a gallon, either in whisky or money, for all orders which are accepted when shipped to the parties C. O. D. through the express office."

If the persons thus acting on commission neither receive nor have any hand in the delivery of the whisky to the customers whose orders they have taken therefor, but merely solicit these orders and send them on to the wholesale liquor dealers who ship the whisky ordered directly to the customers by express, and these agents are not in any way charged for these shipments and are not lookt to by the wholesale liquor dealers for pay for these shipments, they are not, in the opinion of this office, involved in any special-tax liability under the internal-revenue laws of the United States on this account, even tho they receive a commission, either in whisky or money, for soliciting and transmittng these orders.

They are not to be regarded as offering whisky for sale and thereby subjecting themselves to special tax when they merely solicit and receive orders for whisky without having any whisky on hand to deliver to the persons ordering. In United States, plaintiff in error, *v.* George F. Chevallier, the circuit court of appeals held that goods are offered for sale at the place where they are kept for sale and where a sale may be effected; and that they are not offered for sale elsewhere by sending abroad an agent with samples, or by establishing an office for the purpose of taking orders. See this decision in full in 107 Federal Reporter, 434, and in TREASURY DECISIONS of 1901 (T. D. 310, pp. 66, 67, and 68).

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. WM. E. GLASSCOCK,
Collector Internal Revenue, Parkersburg, W. Va.

(T. D. 1073.)

Denatured alcohol.

Retail dealers' record, Form 566.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 20, 1906.

SIR: Application having been made to this office by a stationer in your district for permission to furnish, for the use of retail dealers in denatured alcohol, the prescribed record, Form 566, in tablet form and size, you are advised that this office sees no objection to having the record named prepared as proposed. Collectors of internal revenue are therefore authorized to so inform stationers and publishers applying for sample sheets of that record.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. FERDINAND EIDMAN, *Collector Third District, New York.*

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(T. D. 1074.)

Denatured alcohol.

Use of alcohol tax free not allowed in the manufacture of liniments.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 19, 1906.

GENTLEMEN: Your letter of the 15th instant has been received, asking if a special formula will be authorized for the denaturing of alcohol used in the preparation of liniments for external use only.

In reply, you are informed that alcohol used in the manufacture of liniments, which are liquid medicinal preparations, is expressly excluded from the benefits of the act of June 7, 1906, by the language of the law itself. This being the case, no special denaturant can be authorized for this line of manufacture.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———.

(T. D. 1075.)

Wholesale liquor dealers' stamps.

Withdrawal of small quantity from a package covered by proper marks and stamps, and reduction in proof of the contents remaining will not justify issuance of wholesale liquor dealers' stamp.—Circular 682 explained.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 20, 1906.

SIR: This office is in receipt of your letter of the 15th instant, in which you refer to Circular 682, directing collectors, on and after January 1, 1907, to decline to issue a wholesale liquor dealer's stamp for use on any package not filled on the premises of a wholesale liquor dealer, or for use on any unbroken package bearing the marks, stamps, and brands required by law. You inquire whether this circular applies to a case where a duly qualified rectifier, wholesale and retail liquor dealer takes a package of rectified spirits just filled on his premises, immediately cuts the slip from the stamp for rectified spirits thereto attached and makes application on Form 92 for a wholesale liquor dealer's stamp to cover the same package with the proof slightly reduced, the difference or surplus quantity resulting from the reduction having been disposed of to himself for retail.

In reply, you are informed that said circular is held to apply to such a case. Collectors should refuse, on and after January 1 next, to issue a wholesale liquor dealer's stamp to cover a package so

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manipulated. A wholesale liquor dealer who is also a retail liquor dealer and who desires to dispose of spirits to himself at retail may enter off an entire package for retail on book, Form 52, or he may be allowed to fill one or more packages containing not less than 5 wine gallons each and enter them, or any of them, on the book, Form 52, to himself for retail, first having procured wholesale liquor dealers' stamps to cover such derived packages. The remnant, if any, of 5 wine gallons or more must also be covered by a wholesale liquor dealer's stamp.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. HERMAN F. CELLARIUS,
Collector First District, Cincinnati, Ohio.

(T. D. 1076.)

Stamps and brands on cases of bottled-in-bond whisky.

Cases of bottled-in-bond whisky must bear the stamps, marks, and brands intact. Removal or defacement prohibited by law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1906.

SIR: Your letter of the 15th instant has been received, inclosing a letter from the ——— Drug Company relative to destroying the stamps and brands on cases of bottled-in-bond whisky. You state it is your understanding that to remove the stamps and brands would be a violation of the law and render the goods subject to forfeiture, and you ask to be advised in regard to the matter.

It appears from their application under date of the 14th instant that they have received requests from some of their customers to "scratch all marks on cases containing whisky bottled in bond before making shipment, the idea, of course, being that the merchant prefers not to receive cases so branded." They also state it has been their understanding that this would be illegal, but they are informed that, practically, all jobbing houses in the Northwest are shipping in this way, and they ask for a ruling covering these conditions.

In reply, you are informed that your own understanding and that of this company is correct. Section 6 of the act of March 3, 1897 (29 Stat., 626), allowing the bottling of distilled spirits in bond, provides that—

Any person * * * who shall wilfully remove, change or deface any stamp, brand, label or seal affixed to any such case or to any bottle contained therein, shall for each such offense be fined not less than one hundred nor more than one thousand dollars, and be imprisoned not more than two years, in the discretion of the court, and such spirits shall be forfeited to the United States.

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This provision of the law is explicit and must be respected accordingly. You will take proper action in any cases which may come to your notice of such violations of the law. * * *

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. F. VON BAUMBACH,
Collector Internal Revenue, St. Paul, Minn.

(T. D. 1077.)

Supplemental regulations governing withdrawal of distilled spirits from bonded warehouse for use of the United States, free of tax, under section 3464, Revised Statutes.

[Circular No. 98—Int. Rev. No. 684.]

TREASURY DEPARTMENT, *November 30, 1906.*

Article 2 of the regulations prescribed by Circular 104 of December 23, 1904, governing the withdrawal of spirits for the use of the United States, free of tax, is hereby modified to read as follows:

"ART. 2. Upon receipt of the foregoing application, duly executed, a permit for the withdrawal of the spirits will be issued in duplicate, the original of which will be forwarded to the collector of the district and the duplicate to the Department making the application for withdrawal, which Department will transmit it to the party to whom the spirits are to be delivered for shipment, who will sign the receipt indorsed on the back thereof, and deliver same to the collector of internal revenue."

The last paragraph of Department Circular 50 of April 11, 1905, which requires the receipts of both the officer of the Department for which the spirits are to be withdrawn and the principal to the transportation and delivery bond to be indorsed on the duplicate permit, where the bond is a continuing one, is also modified so as to require only the receipt of the principal to the bond. The effect of the above provisions being to do away with the signature, on the duplicate permit, of the head of the Department, head of bureau not under control of any Department, or that head of bureau under any Department which is charged with the purchase of supplies for the use of that Department, collectors are charged to see that the requirement that the certificate of receipt, Form 545, be approved by that officer, unless the certificate is issued by him, is strictly complied with before credit is given on the transportation and delivery bond.

LESLIE M. SHAW, *Secretary.*

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(T. D. 1078.)

Denatured alcohol.

Special denaturant authorized for alcohol used in the manufacture of celluloid, pyralin, and similar products.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 1, 1906.

SIR: You will please inform ——— ———, manufacturers of celluloid in your district, and the ——— ———, manufacturers of pyralin, that the following formula has been authorized as a special denaturant in the manufacture of celluloid, pyralin, and similar products:

To 100 gallons of alcohol add 7 pounds of camphor and 5 gallons of commercially pure methyl alcohol.

The methyl alcohol must have a specific gravity of not more than .810 at 60° F.

You will please inform the manufacturers of the authorization of this special denaturant.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———.

(T. D. 1079.)

Denatured alcohol.

Special denaturant authorized for alcohol used in the manufacture of transparent soap.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 1, 1906.

SIR: You will please inform Messrs. ——— ———, soap manufacturers in your district, that the following formula has been authorized as a special denaturant for alcohol used in the manufacture of transparent soap:

To 100 gallons of alcohol there shall be added 6½ gallons of the following mixture:

Five gallons of commercially pure methyl alcohol, having a specific gravity of not more than .810 at 60° F.

One gallon of castor oil.

One-half gallon of 36° Baumé caustic soda lye.

The denaturing mixture is best prepared by dissolving the castor oil in the methyl alcohol, and then adding the soda lye.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———.

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(T. D. 1080.)

Instructions concerning records and reports relating to denatured alcohol.

[Int. Rev. Circular No. 685.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 5, 1906.

RECORDS.

1. With the view of reducing, as far as practicable, the work connected with the recording of denatured alcohol, collectors are authorized, in keeping the prescribed Records 131, 134, and 137, to enter therein transactions during the month *in aggregate only*. One or more pages of each record should be assigned to each distiller, manufacturer, or redenaturer, as the case may be, so that a separate and continuous record of the transactions of each such person may be kept.

2. Until otherwise directed, collectors will not be required to keep the Record "15 b," prescribed in section 25 of regulations No. 30. In lieu of that record the officers' monthly reports, Form 575, showing transactions at denaturing bonded warehouses, when received by collectors, will be filed in record form (unfolded) and in chronological order.

3. Collectors, also, will not be required to keep the record, prescribed in section 104 of said regulations, of specially denatured alcohol received and used on the manufacturer's premises.

In lieu of such record, the manufacturers' transcripts (Form 567) will be filed in the collector's office in record form as above indicated. As this method of filing records will materially assist collectors in preparing their own records, and in tracing shipments and receipts of denatured alcohol, it is suggested that all transcripts and monthly reports of officers received be so filed.

4. As announced in T. D. 1053, manufacturers using completely denatured alcohol are required to keep records in cases only where the alcohol so used is recovered for reuse. In such cases the Records 567, 568, and 569, prescribed in Parts IV and V of the regulations, will be kept by such manufacturers. The title of Record 567 should, however, in such cases be changed, so as to read "*Completely* denatured alcohol," instead of "Specially denatured alcohol."

REPORTS, ETC.

5. Collectors will see that all daily and monthly reports received from officers assigned to denaturing bonded warehouses or to restoring and redenaturing plants, and all transcripts of records kept by denaturers, dealers, or manufacturers, are carefully examined and

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compared, with the view of determining whether the alcohol denatured and shipped to such dealers or manufacturers is duly accounted for. They will also see that all duplicates of such reports and transcripts are promptly forwarded to this office for review.

6. Collectors will also prepare and furnish this office, not later than the 15th day of each month, a statement showing, *in aggregate*, the transactions in denatured alcohol in their respective districts during the preceding month. These monthly statements will be made on Form 598, blanks of which form will be furnished on requisition. Blanks of memorandum slips, prescribed in Circular 683, for use of denaturers and wholesale dealers in denatured alcohol, will also be furnished on requisition. Collectors will see that all such parties are supplied with these blanks, which are cataloged under the following numbers:

Form 596.—Memorandum of denatured alcohol shipped from denaturing bonded warehouse or restoring and redenaturing plant.

Form 597.—Memorandum of denatured alcohol shipped by wholesale dealers.

JOHN W. YERKES, *Commissioner.*

Approved:

LESLIE M. SHAW, *Secretary of the Treasury.*

(T. D. 1081.)

Annual inventories to be made by cigar and tobacco manufacturers and verified by deputy collectors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 8, 1906.

To collectors of internal revenue:

I have deemed it proper at this time to call the special attention of collectors and their deputies to the provisions of sections 3358 and 3390 of the Revised Statutes of the United States. These sections of law require manufacturers of tobacco and cigars, respectively, to make on the first day of January of each year true inventories of the stocks of tobacco materials, manufactured products, and unattached stamps held or owned by them on that date. Collectors are also required to make such personal examination of stocks as will satisfy them as to the correctness of the inventories.

In order, therefore, that these requirements may be complied with, collectors are instructed to see that each manufacturer is supplied during the present month with the necessary inventory blank, Form 70*a* or 70*b*, and that each inventory is verified by a deputy collector as soon after the first of the year as possible, deputies being directed to so arrange their routes as to accomplish their work not later than the 20th day of January.

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As these inventories are important elements in making up the statements of accounts of tobacco and cigar manufacturers each year, it is essential that all doubt as to their accuracy should be eliminated before the accounts are prepared.

Upon receipt of these inventories, properly verified, collectors will prepare their annual abstract statements on Forms 144 and 146 of accounts of cigar and tobacco manufacturers, respectively, in their districts for the year 1906, and complete and forward same within ninety days from the first day of January.

Special attention is called to notes 5 and 6 of instuctions printed on the back of Form 144; to pages 41 and 52 of regulations No. 8, revised, relating to inventories, and to the third paragraph on page 68, which relates to deficiencies discovered at the time an annual inventory is filed.

Attention is also called to T. D. 20480 (vol. 1, 1899), relating to the outside storage of leaf tobacco by manufacturers, and to T. D. 21449 (vol. 2, 1899), relating to imported cigar leaf tobacco not received at the factory and which can not properly enter into the manufacturers' accounts.

JOHN W. YERKES, *Commissioner.*

(T. D. 1082.)

Amendment of section 26, regulations No. 30, concerning denatured alcohol.

[Int. Rev. Circular No. 686.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 10, 1906.

Section 26 of the regulations and instructions concerning denatured alcohol, issued September 29, 1906, is amended by inserting after the words "approved benzine," in the ninth line of said section, the following:

"Or methyl alcohol and approved pyridin bases, in the following proportions: To every 100 parts by volume of ethyl alcohol of the desired proof (not less than 180°) there shall be added two parts by volume of approved methyl alcohol and one-half of one part by volume of approved pyridin bases—for example, to every 100 gallons of ethyl alcohol (of not less than 180° proof) there shall be added 2 gallons of approved methyl alcohol and one-half gallon of approved pyridin bases."

NOTE.—Methyl alcohol intended for use as a denaturant must conform to the specifications prescribed in Circular No. 680.

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Pyridin bases intended for use as a denaturant must conform to the following specifications:

Specifications for pyridin bases submitted for approval as a denaturing material.

PYRIDIN BASES.

1. *Color.*—The liquid must meet the same requirements as to color that are imposed upon wood alcohol. (See Circular No. 680.)

2. *Reaction with cadmium chloride.*—Ten cc. of a solution of 1 cc. of pyridin bases in 100 cc. of water are treated with 5 cc. of a 5 per cent aqueous solution of anhydrous fused cadmium chloride, and the mixture vigorously shaken. Within ten minutes an abundant crystalline separation should take place.

3. *Behavior with Nessler's reagent.*—With 5 cc. of Nessler's reagent, 10 cc. of the above solution of pyridin bases must give a white precipitate.

4. *Boiling point.*—When 100 cc. are subjected to the determination of the boiling point in the same manner as prescribed for wood alcohol, at least 50 cc. must distil at 140° C. and at least 90 cc. at 160° C.

5. *Miscibility with water.*—The same requirements must be met as are imposed upon wood alcohol. (See Circular No. 680.)

6. *Content of water.*—When 20 cc. of pyridin bases are shaken with 20 cc. of a solution of caustic soda, with a specific gravity of 1.400, and the mixture allowed to stand for some time, at least 18.5 cc. of the pyridin bases must separate from the solution.

7. *Alkalinity.*—One cc. of pyridin bases dissolved in 10 cc. of water are titrated with normal sulphuric acid until a drop of the mixture placed upon Congo paper shows a distinct blue border, which soon disappears. It must require not less than 9.5 cc. of the acid solution to produce the reaction.

The Congo paper is prepared by treating filter paper with a solution of 1 gram of Congo red in 1 liter of water, and drying it.

JOHN W. YERKES, *Commissioner.*

Approved:

LESLIE M. SHAW, *Secretary of the Treasury.*

(T. D. 1083.)

Denatured alcohol.

Formula for special denaturant to be used in the manufacture of shellac varnishes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 11, 1906.

SIR: You will please inform the ——— ——— Company, manufacturers of paints and varnishes in your district, that, in accordance

with section 80 of regulations No. 30, the following formula has been authorized as a special denaturant for use in the manufacture of shellac varnishes:

To 100 parts by volume of ethyl alcohol shall be added 5 parts by volume of methyl alcohol.

The methyl alcohol shall be subject to the same specifications as are imposed upon the methyl alcohol used in completely denatured alcohol, which are set forth in Circular No. 680.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. H. L. HERTZ, *Collector Internal Revenue, Chicago, Ill.*

(T. D. 1084.)

Denatured alcohol.

How druggists, who are technically under the internal-revenue laws liquor dealers, but do not handle distilled spirits as beverages, can secure permits to deal in denatured alcohol on the same premises on which they keep their stock of tax-paid alcohol.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 11, 1906.

SIR: I am in receipt of your letter of the 7th instant, in which you say that numerous letters are coming to you from druggists in various sections of the country who complain that under the construction of the regulations concerning dealers in completely denatured alcohol, in letter of November 17, 1906 (T. D. 1071), it is impossible for them to secure permits to deal in denatured alcohol.

You say—

The difficulty of which the druggists complain arises through the construction of the term "liquor dealer." While practically all of the druggists in the country have United States licenses to deal in distilled spirits, they are not "liquor dealers" in the sense that they sell distilled spirits for beverage purposes. In nearly all cases these spirits are intended only for medicinal purposes, and comparatively few druggists sell liquors for use as a beverage. As it would be a great hardship to refuse permission to more than 40,000 druggists to deal in completely denatured alcohol because a few druggists also sell distilled liquors to be used as a beverage, we would respectfully suggest that the ruling of the Treasury Department of November 17 be modified so as to allow of a permit to be issued to all retail druggists who file affidavits to the effect that they sell distilled spirits for medicinal purposes only.

In reply, I will say that it seems to this office that the decision in question is clear enough and needs no explanation or modification in order to enable druggists who are entitled to permits to secure

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same. It was the intention of said decision to do exactly what you suggest is proper, to wit, to include in the exempting clause of section 59 of regulations No. 30, druggists who handle distilled spirits, etc., as medicines, or who sell tax-paid alcohol to be used as alcohol in mechanical or medicinal ways and to exclude from said exempting clause druggists who handle beer, wines, whiskies, brandies, etc., as beverages.

That there may be no possible room for misunderstanding the position of this office I will state that because a druggist holds a special-tax stamp as a liquor dealer, it is not to be assumed that he sells distilled spirits as a beverage. It is understood that many druggists, probably a majority of them, sell pure tax-paid ethyl alcohol for mechanical and medicinal purposes and that some sell whiskies, wines, brandies, etc., in a limited way on physicians' prescriptions as medicines. Under the internal-revenue special-tax laws such druggists involve themselves in special-tax liability as liquor dealers, but they are not such liquor dealers as are excluded from the exempting clause of section 59 of regulations No. 30, unless they handle spirits as beverages. On the one side are druggists who may be technically under the internal-revenue laws liquor dealers, but who, not selling distilled spirits, wines, or malt liquors as beverages, can secure permits to deal in denatured alcohol on the same premises on which they keep their stock of tax-paid alcohol, etc., stored; on the other side are druggists who handle distilled spirits, etc., as beverages in the same manner as such spirits are handled by liquor stores and who therefore can not secure permits authorizing them to deal in denatured alcohol on the premises on which they sell their beverage liquors or keep them stored.

As to whether a druggist comes within one or the other class depends upon the facts in each particular case. You suggest that some uniform method of determining and disclosing the facts be adopted and you submit a form of an affidavit setting forth that the applicant does *not* deal in distilled spirits as a beverage, said affidavit to be filed with the application for permit. Upon this point I will state that this office sees no objection to the use of an affidavit of the kind suggested by you, but does not deem it necessary to prescribe such an affidavit as a form. It is thought that such additional clause or words as may be necessary to state the facts in each particular case can be added to the regular application for permit—Form No. 579. All that will be necessary will be for the applicant to show, either in the face of the form or by separate affidavit, that under this decision and section 59, regulations No. 30, he is entitled to permit.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. ——— ———, *New York.*

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(T. D. 1085.)

Denatured alcohol.

Dealers in varnishes, shellacs, paints, etc., who are technically liquor dealers under the internal-revenue laws but do not sell spirits as beverages, may have permits issued to them to deal in denatured alcohol at the place where tax-paid alcohol is kept. The same rule applies to them as to druggists.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 7, 1906.

GENTLEMEN: I am in receipt of your letter of the 5th instant, in which you make certain inquiries in regard to the handling of denatured alcohol. You state that you have made application to the internal-revenue collector of your district for permits to deal in completely denatured alcohol at wholesale and retail, and that you are informed that it is necessary for you to construct a separate room on your premises for keeping the denatured product. You do not understand why you should be required to construct such separate room, and you ask for information on this point.

You state you do not manufacture anything at ——— street (your place of business), all of your goods being manufactured at 513–519 West 58th street, New York; that the premises at ——— street (your place of business) consist of a store and office and three lofts, where you sell varnishes, paints, and dry colors, and occupy the whole building.

You state further that—

At the present time we have a retail-liquor license, as we sell grain alcohol in small quantities, less than 5 gallons, and this is the only thing that we sell, in a small way, which might be construed as being liquor dealers, but if this should interfere with the granting of our permit for the sale of denatured alcohol, we will give up this license on January 1, 1907. * * *

In reply, you are advised that, not being manufacturers at ——— street (your place of business), and using no denatured alcohol as manufacturers at said place, section No. 75 of regulations No. 30 does not apply to you, and you will therefore not be required to provide a room in which to keep the denatured alcohol as prescribed by said section.

The only question seems to be whether or not you can keep denatured alcohol stored on your premises at ——— street, your place of business, and continue to keep tax-paid alcohol stored on said premises, and deal in it as indicated in your letter. By reference to section No. 59, regulations No. 30, you will note that denatured alcohol can not be stored on the premises of dealers in distilled spirits, wines, or malt liquors, or of persons who, in the course of business, have or keep distilled spirits, wines, or malt liquors stored

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on their premises. Druggists are specially exempted from the provisions of this section. You are dealers in varnishes, shellacs, paints, etc., and could not be classed as druggists, but your business is very similar to the business of druggists and the same reasons that suggested that druggists be exempted from the provisions of section No. 59 apply to you. It is understood from your statement that you handle in a retail way tax-paid grain alcohol in practically the same manner as it is handled by druggists; that you sell such alcohol in the course of your business as dealers in varnishes, paints, etc.; that you do not sell whiskies, wines, malt liquors, or beverage spirits, and altho you are technically liquor dealers under the internal-revenue laws, because of the sale of alcohol made by you, you do not sell liquors as a beverage. If such is the case, then permits may be issued to you to deal in denatured alcohol at your store in spite of the fact that you are retail liquor dealers there.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———, *New York.*

(T. D. 1086.)

Denatured alcohol.

Denatured alcohol and beverage liquors can not be stored on the same premises. A department store can not be permitted to store denatured alcohol in its drug department when it has a wholesale liquor and rectifying establishment in its grocery department on the same premises. Where there is a warehouse for storing denatured alcohol on separate premises, a permit can be issued.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 12, 1906.

GENTLEMEN: I am in receipt of your letter of the 10th instant, in which you state—

We are desirous of ascertaining whether there can be anything in the regulations which will prevent a department store like ours from selling denatured alcohol in our drug department in sealed packages of less than 4½ gallons.

Our drug department is situated on the main floor of our building. We have a wholesale liquor and rectifying license in our grocery department on the fifth floor.

In reply, your attention is called to section 59, regulations No. 30, regulations and instructions concerning denatured alcohol, which reads as follows:

Neither completely nor specially denatured alcohol shall be kept or stored on the premises of the following classes of persons, to wit: Dealers in wines, fermented liquors or distilled spirits, rectifiers of spirits, manufacturers of and dealers in beverages of any kind, manufacturers of liquid medicinal preparations, or distillers (except as to such denatured alcohol in stamped packages as is manufactured by themselves), manufacturers of vinegar by the vaporizing process and the use of a still and mash, wort, or wash, and persons who, in the course of business, have or keep distilled spirits, wines, or malt liquors, or other beverages stored on their premises. Provided that druggists are exempt from the above provisions.

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You will note that druggists are exempt from the provisions of said section. This office holds, however, that druggists who deal in distilled spirits, wines, or malt liquors as a beverage do not come within the exempting clause, that they are in the same class as ordinary liquor dealers and can not store denatured alcohol for sale or for any other purpose on the same premises on which they store their stock of distilled spirits, wines, or malt liquors. The object of section 59 is to prevent denatured alcohol and beverage liquors from being *stored* on the same premises.

It is understood from your letter that all five or more stories of your store constitute the same premises, that there are means of interior communication, such as elevators, etc., from one story to the other, and that in going from one story or part of your store to the other you remain on your own premises. Your liquor department on your fifth floor and your drug department (in which you propose to keep stored and sell denatured alcohol) on your first floor, are therefore, a part of the same premises. Under these circumstances permit to deal in denatured alcohol and keep the same stored in the drug department or in any other department similarly located with reference to your liquor department, can not be issued.

If you have premises—such as a warehouse—separate from your main store and not constituting a part of the same premises and there are no means of interior communication between such premises and your main store, then permit may issue authorizing you to keep denatured alcohol stored on such premises and delivered to your customers therefrom.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ——— ———, *New York.*

(T. D. 1087.)

Internal-revenue inspectors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 14, 1906.

To collectors of internal revenue and internal-revenue agents:

Inspectors appointed under section 3 of the act of June 7, 1906, will be designated as internal-revenue inspectors. They will be appointed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

Each inspector will be entitled to such salary and per diem in lieu of subsistence as may be stated in his warrant of employment. He will be entitled to all necessary traveling expenses actually incurred while in the discharge of his official duties.

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Revenue inspectors will be assigned to duty either under revenue agents in charge of divisions, under collectors of internal revenue, or jointly under such revenue agents and collectors as may, by this office, be deemed advisable. When assigned to duty jointly under a revenue agent and a collector, inspectors will transmit reports of their work in duplicate, one copy to the revenue agent and one to the collector. They will prepare and transmit to this office, thru the revenue agent if assigned only to an agent or jointly to an agent and collector, or thru the collector if assigned only to a collector, tri-monthly diary reports showing the official duties performed by them each day. They will be paid from this office, and for the present they may submit their accounts for salary on Form 54 and their expense accounts on Form 132, making such changes in said forms as may be necessary in order to make them conform to the facts.

The duties of inspectors will be primarily and principally to look after the work of administering the denatured alcohol law. If the emergency demands, however, that they be assigned temporarily to any class of field internal-revenue work, the same may be done. They must acquaint themselves specially with all the provisions of the denatured alcohol law and regulations, and must perform such duties in connection with the enforcement of said law as are stated in regulations No. 30 and Circular No. 683.

JOHN W. YERKES, *Commissioner.*

(T. D. 1088.)

Enforcement of act of June 7, 1906.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 14, 1906.

To collectors of internal revenue and internal-revenue agents:

There seems to be an impression among the officials of the Internal Revenue Bureau that all of the work in connection with the operation and enforcement of what is commonly called the "denatured alcohol bill" will be done by an absolutely new force, and that the present force will be absolved from responsibility for and connection with this work. This is absolute error. The operation and enforcement of this law is simply a part of the internal-revenue system. The present officials will be expected to acquaint themselves fully and thoroly with the law and regulations. Division deputy collectors will be required to add this to their present duties, and to have surveillance of this branch of internal-revenue operations in connection with their former work.

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The Congress made an appropriation, limited in amount, to aid in the enforcement of this new law, but it was believed and expected by the Congress that large assistance would be given by the present force.

At distilleries where alcohol will be denatured storekeepers and gaugers on duty will be expected to attend to the work, unless it is of such character and magnitude as to require an addition to the present force at these distilleries. If so, additional storekeepers, storekeeper-gaugers, or gaugers will be assigned to duty by the collector, but only where it is absolutely imperative that the local force at the distillery be increased.

Where the character and quantity of work is such as to warrant the appointment of additional officials, either in the office of the collector or for field work, it will be done, but only where the necessity is absolutely imperative.

Collectors will immediately upon receipt of this communication write to this office a full detailed statement as to the increased amount of work that will occur in their respective districts by reason of the new legislation. If any distillers in the district propose to denature alcohol, this fact will be stated, and also some estimate made as to quantity. If in the district there are manufacturing interests that will use denatured alcohol, that should be stated as accurately as possible.

The number of wholesale and retail dealers in the denatured product will be determined by the number of applications for permit, and this will be a matter of office record.

So far as I can see at the present time, there will be need for an increased office force in few cases.

You will instruct your entire force, office and field, including storekeepers, storekeeper-gaugers, and gaugers, to immediately acquaint themselves with the provisions of the new law and all the regulations thereunder, so that by the first of January they will be ready and thoroly equipped to give proper attention to this branch of the service.

Revenue agents and their forces will also be expected to take up this work, and have the same oversight and overcharge of it that they have of previous existing departments of internal-revenue operations.

Each collector and internal-revenue agent will acknowledge receipt of this letter, and then, as speedily as possible thereafter, make the report required above, with recommendation based upon knowledge of the increased work of the district, as to what increased force may be necessary.

JOHN W. YERKES, *Commissioner.*

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(T. D. 1089.)

Postponing for thirty days from and after January 1, 1907, the provisions of Circular No. 682.

[Int. Rev. Circular No. 687.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 14, 1906.

To collectors of internal revenue and other internal-revenue officers:

By reason of the fact that rectifiers and wholesale liquor dealers have presented for the consideration of this office certain legal questions in connection with Circular No. 682, regarding the use of wholesale liquor dealers' stamps, and the desire of this office to carefully consider the questions presented, you are directed to postpone enforcement of the provisions of said circular for the period of thirty days from and after January 1, 1907.

JOHN W. YERKES, *Commissioner.*

(T. D. 1090.)

Pure-food law.

All inquiries in regard to the pure-food law should be addressed to the Secretary of Agriculture, Washington, D. C.

TREASURY DEPARTMEMT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 17, 1906.

SIR: Your letter of the 13th instant has been received, stating that you have numerous inquiries in regard to the pure-food law, effective January 1, 1907, and asking for instructions in the premises.

All persons addressing these inquiries to you should be referred to the Honorable Secretary of Agriculture, Washington, D. C., as his Department is charged with the administration of this law.

Respectfully, ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. E. B. STEPHENSON,
Collector of Internal Revenue, Omaha, Nebr.

(T. D. 1091.)

Appointment of deputy collectors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 18, 1906.

To collectors of internal revenue:

Referring to the President's order of November 7, 1906, hereto appended, bringing into the competitive classified service the positior

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of deputy collector in the Internal-Revenue Service, you are hereby instructed that all appointments to the position of deputy collector, either probationary or temporary, must be made upon the prescribed form, 491*b*, and submitted to the district civil service secretary for approval before being forwarded to this office, the same as is done with other appointments made to classified positions.

JOHN W. YERKES, *Commissioner*.

EXECUTIVE ORDER.

AMENDMENT TO CIVIL SERVICE RULES.

Schedule A of the civil service rules is hereby amended by striking out paragraph 5, under Section II, Treasury Department.

The paragraph striken out reads:

5. All deputy collectors of internal revenue who are borne on the rolls as such, and the allowance for whose salaries is approved by the Secretary of the Treasury: *Provided*, That no position designated as a clerkship under a collector of internal revenue, appointment to which is made by the Secretary of the Treasury, shall be discontinued for the purpose of substituting a deputy collectorship therefor, or for any reason other than a bona fide reduction of force, and that before such reduction shall be made the reasons therefor shall be given in writing by the collector of the district, and shall be approved by the Commissioner of Internal Revenue and the Secretary of the Treasury. This exception from the requirement of examination shall not apply to the fifth internal revenue district of North Carolina.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *November 7, 1906*.

(T. D. 1092.)

Denatured alcohol.

Manufacturing chemists and wholesale druggists producing liquid medicinal preparations, or dealing in beverage spirits, as such, not entitled to the exemption provided in section 59 of regulations No. 30.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 18, 1906.

SIR: This office is in receipt of your letter of the 13th instant, in reference to the application of ——— manufacturing chemists and wholesale druggists of ——— for permit to deal in denatured alcohol.

It appears from your letter and inclosure, that this company has paid a special tax both as wholesale and retail liquor dealer, but that, as druggist, it claims the right, under the exempting clause in section 59 of regulations No. 30, to sell and store alcohol on the same premises where other distilled spirits are stored. You state that, as construed by you, the word "druggist," as used in section 59, means "a person or firm compounding medicines under the prescriptions of

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physicians;" and that you have informed the company that it is prohibited by that section and by T. D. 1071 from dealing in denatured alcohol on the same premises used by them as wholesale and retail liquor dealers.

The word "druggist" is defined by Webster as "one who deals in drugs, especially one who buys and sells drugs without compounding them;" and this word, as used in the regulations, is intended to apply to *all* druggists, whether wholesale or retail, provided spirits and other liquors, if kept on the premises, are sold for medicinal or mechanical purposes only. (T. D. 1071 and T. D. 1084.)

But, in the present case, it appears that the company is also engaged in *manufacturing* drugs, etc., and, presumably, in making liquid medicinal preparations. As such manufacturer it could not come within the exemption referred to; and, as in the case of other manufacturers producing like articles, or druggists selling spirits or other liquors as a beverage, it would, if dealing in denatured alcohol, be required to store such alcohol on premises other than those used for manufacturing or selling such articles or liquors.

The act relating to denatured alcohol contains a specific provision against the use of such alcohol for beverage or liquid medicinal purposes, and it would be manifestly unsafe and contrary to the purpose of the act to permit such alcohol to be stored on premises where beverages are sold or where such medicinal preparations are manufactured.

While this privilege might be safely granted in many instances, this office, in administering revenue laws, is clearly not warranted in granting special privileges in individual cases. Your action in declining to issue a permit for the sale of denatured alcohol on the premises described is therefore approved by this office.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. EDGAR O. CROSSMAN,
Collector Internal Revenue, Portsmouth, N. H.

(T. D. 1093.)

Denatured alcohol.

Manufacturers of furniture, hats, etc., who have duly qualified, may use specially denatured alcohol in the manufacture of shellac varnish.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 18, 1906.

GENTLEMEN: In reply to your inquiry of the 15th instant, you are informed that alcohol specially denatured, under the formula published in T. D. 1083, for use in the manufacture of shellac varnish, can be used for that purpose by manufacturers of pictures, furniture,

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hats, etc., as well as by manufacturers of shellac varnish, provided they give the required bond and otherwise qualify as provided in Part III of regulations No. 30.

Respectfully, JOHN W. YERKES, *Commissioner.*

Messrs. ———, *Chicago, Ill.*

(T. D. 1094.)

Denatured alcohol.

Druggists engaged in the business of rectifying distilled spirits, liquors, etc., are to be regarded, under the regulations relating to denatured alcohol, as rectifiers, and not as druggists entitled to the exemption provided in section 59 of said regulations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 18, 1906.

SIR: I am in receipt of your letter of the 16th instant, in reference to the application of ———, wholesale druggists of your city, for permit to deal in denatured alcohol. You state that these parties have paid a special tax as wholesale and retail liquor dealers and rectifiers, and that they supply their customers not only with drugs but with distilled spirits and other liquors commonly used as beverages.

In reply to your inquiry whether these parties, as druggists, are not entitled to the exemption provided in section 59 of regulations No. 30, notwithstanding T. D. 1071 and T. D. 1084, you are informed that persons and firms engaged in the business of rectifying distilled spirits or liquors, or selling spirits or liquors as beverages, are, under the regulations and decisions referred to, regarded as rectifiers and liquor dealers; and the fact that the business is carried on in connection with the sale of drugs, etc., does not entitle the parties to the exemption claimed in this case. If otherwise held, any rectifier of, or dealer in, distilled spirits, wines, or liquors, might easily evade the regulations, prohibiting the storage of denatured alcohol on the premises of a rectifier or liquor dealer, by simply combining with the business the sale of drugs.

It is obviously necessary for the protection of the revenue to exclude from the premises of rectifiers, and dealers in beverage spirits, denatured alcohol on which the tax has not been paid; and, in exempting druggists from the prohibition contained in section 59, it is found necessary to draw the line between those engaged in the regular business of druggists, and those who, in connection with the drug business, rectify and sell beverage spirits.

The application applied for in the present case should therefore not be granted if the denatured spirits are to be kept or stored on the premises described.

Respectfully, JOHN W. YERKES, *Commissioner.*

Mr. WM. MCCOACH, *Collector First District, Philadelphia, Pa.*

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(T. D. 1095.)

Supplemental to regulations No. 30, concerning denatured alcohol.

[Int. Rev. Circular No. 688.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 20, 1906.

DENATURED ALCOHOL TO BE PURCHASED IN ORIGINAL PACKAGES.

To insure compliance with the regulations, respecting the purchase and use of denatured alcohol, dealers and manufacturers handling such alcohol will be permitted to purchase the same in *original stamped packages* only. This limitation will apply also to purchases by manufacturers using denatured alcohol in quantities less than 50 gallons per month, who, under the provisions of section 75 of the regulations, are not required to obtain permits, keep records, or render returns.

FORM OF BOND FOR RECOVERED ALCOHOL TO BE SENT TO RESTORING AND REDENATURING PLANT.

Where alcohol recovered by a manufacturer is to be redenatured at a restoring and redenaturing plant, the prescribed bond, Form 582 or 586, providing for redenaturation on the *manufacturer's premises*, will, as to that portion of the bond (commencing on line 38 of Form 582 and line 19 of Form 586) be modified as follows:

* * * "And whereas the said principal— propose— to have the alcohol, so recovered, restored and redenatured at a restoring and redenaturing plant, provided redenaturation is necessary, before reusing the same. Now, therefore, if the said principal— shall remove all of said alcohol so recovered to ——— storeroom for denatured alcohol on said premises, as soon as it is so recovered; shall safely keep said alcohol in said storeroom until lawfully removed therefrom for restoring and redenaturing as aforesaid, provided redenaturation is necessary." * * *

The remaining portion of the bond will be the same as heretofore prescribed, and the changes above noted may be made either by interlineation or by attaching to that portion of the bond, where such changes are necessary, a written or printed slip containing the words above given. In either such case the officer taking the acknowledgment of the signers will note in his certificate that all such erasures and substitutions were made before the execution of the bond.

JOHN W. YERKES, *Commissioner.*

Approved:

LESLIE M. SHAW, *Secretary of the Treasury.*

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INDEX.

A.

	Dept. No.
Accounts current; uniformity of blanks	1028
Adulterated butter, regulations concerning	1009
Agents of wholesale liquor dealers; special tax	1072
Alcohol, denatured. (*See* Denatured alcohol.)	
Alcohol in the arts	1011
Alcohol, recovery of, by distillation; rectification	963
Alcohol withdrawn from bond, free of tax, for use of United States	985
Alcoholic compound:	
External remedies	968
Hostetter's Bitters	999
Peruna, change in formula	988
Alcoholic liquors, apothecaries' exemption under section 3246, Revised Statutes	1019
Alphabetical list of special-tax payers	1036
Artificial coloration; oleomargarine	994
Assessments, collector protected in collecting	987

B.

Bank circulation; 10 per cent tax	1041
Barrels or drums, metal, containing distilled spirits of high proof	996
Blank forms relative to exportation of articles under internal-revenue laws	1034
Boats, small, retailing liquors on	1007
Bond for release; decision of court	992
Bond, tobacco peddler's	984
Bonded warehouses, denaturing; denatured alcohol	1062
Bonds:	
Defective; alterations and erasures, how made	1000
Distillers'. (*See* Distillers' bonds.)	
Warehouse, effect of filing new	1004
Bonds for transportation of distilled spirits	1045
Bottled-in-bond spirits	991
Bottled-in-bond whisky, stamps and brands on cases of	1076
Bottling warehouses, distillery, gaining access to contents of	990
Brandy, grape; instructions as to certain entries on Form 22	1033
Brewers filing Form 27*c* after having ceased business as brewers	1005
Buffet in a lodge; special tax	1003
Butter:	
Adulterated, regulations concerning	1009
Renovated; laws applicable; decision of court	980

C.

Cards, playing; division of pack into two parts	1023
Celluloid, manufactures of; denatured alcohol	1078
Certified copies, fees for furnishing, to be deposited in Treasury	1020
Certified copies from list of special-tax payers; scope of act of June 21, 1906	1050
Certified copies of certain records, furnishing	1018
Cigar and tobacco manufacturers; annual inventories	1081
Cigar factory, enlargement of; consent of sureties on bond	964
Cigar stamps, counterfeit	978
Cigarette packages, dummy, coupons attached to	1015
Cigars and tobacco, returns of manufacturers:	
Enforcement of T. D. 1039	1047
Power of attorney	1039
Cigars and tobacco, sales of, at public gatherings	969

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Circular letters: Dept. No.
Accounts current; uniformity of blanks 1028
Appointment of deputy collectors 1091
Cigar and tobacco manufacturers; annual inventories 1081
Enforcement of act of June 7, 1906 1088
Fortification of pure sweet wine 1029
Interest on judgments 1016
Internal-revenue inspectors 1087
Offers in compromise 989
Oleomargarine; foreign landing certificate or consignee's declaration 967
Special-tax payers, relief to, where special-tax stamps have been lost or destroyed 1027
Circulars:
Barrels or drums, metal, containing distilled spirits of high proof (No. 678) 996
Denatured alcohol, amendment of regulations concerning (No. 686) 1082
Denatured alcohol; duties of officers in manufacture, sale, and use of (No. 683) 1068
Denatured alcohol; methyl alcohol and benzine (No. 680) 1057
Denatured alcohol, records and reports relating to (No. 685) 1080
Denatured alcohol, supplemental to regulaltions No. 30 (No. 688) 1095
Distilled spirits, regulations governing withdrawal of (No. 684) 1077
Sale of United States internal-revenue stamps in Porto Rico (No. 679) 1031
Testing bottles for containing bottled-in-bond spirits (No. 681) 1063
Transfer of storekeepers, storekeeper-gaugers, and gaugers (No. 677) 970
Wholesale liquor dealers' stamps, use of (No. 682) 1064
Wholesale liquor dealers' stamps, use of (No. 687) 1089
Circulars by numbers:
No. 677. Transfer of storekeepers, storekeeper-gaugers, and gaugers 970
No. 678. Barrels or drums, metal, containing distilled spirits of high proof. 996
No. 679. Sale of United States internal-revenue stamps in Porto Rico 1031
No. 680. Denatured alcohol; methyl alcohol and benzine 1057
No. 681. Testing bottles for containing bottled-in-bond spirits 1063
No. 682. Use of wholesale liquor dealers' stamps 1064
No. 683. Denatured alcohol, duties of officers in manufacture, sale, and use of 1068
No. 684. Distilled spirits, regulations governing withdrawal of 1077
No. 685. Denatured alcohol, records and reports relating to 1080
No. 686. Denatured alcohol, amendment of regulations concerning 1082
No. 687. Wholesale liquor dealers' stamps, use of 1089
No. 688. Denatured alcohol, supplemental to regulations No. 30 1095
Circulation; 10 per cent tax 1041
Claims for refund of legacy taxes 1061
Collector protected in collecting assessments 987
Collectors to summon persons to appear and produce books 993
Collins lemmon ginger; special tax 1044
Compromise, offers in 995
Consignee's declaration or foreign landing certificate; oleomargarine 967
Counterfeit cigar stamps 978
Coupons attached to "dummy" cigarette packages 1015
Courts, decisions of:
Bond for release; U. S. *v.* 59,650 cigars; U. S. Dist. Ct., S. D. of N. Y. (138 Fed. Rep., 166) 992
Gross receipts, taxability of; U. S. *v.* Consumer's Gas Trust Co.; U. S. Cir. Ct. of appeals (142 Fed. Rep., 134) 981
Legacy taxes; Disston *v.* McClain; U. S. Cir. Ct., E. D. of Pa. (143 Fed. Rep., 191) 976
Legacy taxes under war-revenue act, legacy to adopted daughter; Kerr *v.* Goldsborough; U. S. Cir. Ct., Dist. of Md 986
Renovated butter, laws applicable; U. S *v.* Green: U. S. Dist. Ct., N. D. of N. Y. (137 Fed. Rep., 179) 980
Special tax, assessments, liability of express companies; Western Express Co. *v.* U. S., U. S. Cir. Ct. of appeals (141 Fed. Rep., 28) 965
Stamp tax on manifests under war-revenue act; U. S. *v.* New York and Cuba Mail Steamship Co.; U. S. Supreme Court (200 U. S. Reps., 488). 983
Suits against collectors for recovery of taxes; Schwarzchild & Sulzberger Co. *v.* Rucker, collector; U. S. Cir. Ct., N. D. of Ga. (143 Fed. Rep., 656) 974

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Courts, decisions of—*Continued.* Dept. No.
Suits on distillers' bond; U. S. *v.* U. S. Fidelity and Guaranty Co., U. S. Dist. Ct., Dist. of Conn. (144 Fed. Rep., 866) 975
Suits on distillers bonds; U. S. *v.* Guest; U. S. Cir. Ct. of Appeals (143 Fed. Rep., 456) 979
Custom-house brokers selling imported liquors 1001

D.

Defective bonds; alterations and erasures, how made 1000
Denatured alcohol 1048, 1049
Amendment of regulations concerning 1082
Celluloid, manufactures of 1078
Denaturing bonded warehouses 1062
Druggists as rectifiers 1094
Druggists' permits to deal in 1084
Druggists with stocks of liquors 1071
Duties of officers in manufacture, sale, and use of 1068
Dyestuffs 1056
Flavoring extracts or essences 1069
For use in the arts; limitations 1024
Furniture, hats, etc., manufactures of 1098
Manufacture of, in Indian Territory 1060
Manufacture of liniments 1074
Manufacture of vinegar 1052
Manufacturing chemists and wholesale druggists 1092
Materials from which it may be produced 1025
Methyl alcohol and benzine 1057
Permit to liquor dealer 1051
Permits to druggists and dealers in varnishes, paints, etc 1085
Records and reports relating to 1080
Regulations explained 1067
Retail dealers' record, Form 566 1073
Shellac varnishes, manufactures of 1083
Shipment in tank cars not permitted 1058
Specially denatured only 1053
Storage of 1059, 1066, 1086
Sulphuric ether 1070
Supplemental to regulations No. 30 (Circular 688) 1095
Transparent soap, manufactures of 1079
Varnishes 1055
Deputy collectors, appointment of 1091
Distilled spirits:
Addition of water to contents of double-stamped packages 997
Bonds for transportation of 1045
Destruction of, while undergoing artificial aging process 1010
High-proof, metal barrels or drums containing 996
Regulations governing withdrawal of 1077
Reimportation of domestic 1006
Seized for fraud and sold under forfeiture, tax on 1030
Distillers' bonds 998
Suits on; decisions of court 975, 979
Distillers' warehousing bonds 1040, 1054
Distillery bottling warehouses, gaining access to contents of 990
Druggists as rectifiers; denatured alcohol 1094
Druggists' exemption under section 3246, Revised Statutes 1019
Druggists' permits to deal in denatured alcohol 1084
Druggists with stocks of liquors; denatured alcohol 1071
Drums or barrels, metal, containing distilled spirits of high proof 996
Dummy cigarette packages, coupons attached to 1015
Dyestuffs; denatured alcohol 1056

E.

Enforcement of act of June 7, 1906 1088
Exportation of articles under internal revenue laws, blank forms relative to 1034
Express companies, liability of; special tax; assessments 965
Express, instructions relative to forwarding by; public moneys 1032
External remedies; alcoholic compounds 96

Digitized by Google

F.

Dept. No.

Fees for furnishing certified copies to be deposited in Treasury 1020
Fermented liquors, restrictions as to shipping 1035
Flavoring extracts or essences, denatured alcohol 1069
Flour, mixed 971
Foreign landing certificate or consignee's declaration; oleomargarine 967
Forfeiture, tax on distilled spirits seized for fraud and sold under 1030
Form 22, instructions as to certain entries on; grape brandy 1033
Form 27c, brewers filing, after having ceased business as brewers 1005
Form 566, retail dealers' record; denatured alcohol 1078
Fortification of pure sweet wine 1012, 1029, 1037
Forwarding by express, instructions relative to; public moneys 1032
Furnishing certified copies of certain records 1018
Furniture, hats, etc., manufactures of; denatured alcohol 1098

G.

Ginger, lemon, Collin's; special tax 1044
Grape brandy; instructions as to certain entries on Form 22 1033
Gross receipts, taxability of; decision of court 981

H.

Hostetter's Bitters; alcoholic compounds 999

I.

Illicit manufacture; oleomargarine 1065
Interest on judgments 1016, 1017
Internal-revenue inspectors 1087
Internal-revenue laws, blank forms relative to exportation of articles under 1034
Inventories, annual; cigar and tobacco manufacturers 1081

J.

Judgments, interest on 1016, 1017

L.

Leaf tobacco:
- Sale of, to Department of Agriculture 1026
- Storage of 1002

Legacy taxes:
- Claims for refund of 1061
- Decision of court 976, 986

Lemon ginger, Collin's; special tax 1044
Liniments, manufacture of; denatured alcohol 1074
Liquor agents, State; special tax 973
Liquor, shipment of, by wholesale liquor dealer to himself; special tax 977
Liquors:
- Fermented, restrictions as to shipping 1035
- Imported, custom-house brokers selling 1001
- Merchants sending orders for; special tax 972
- Retailing, on small boats 1007
- Shipments of, with bills of lading; special tax 982

M.

Manifests under war-revenue act, stamp tax on; decision of court 983
Manufacture of denatured alcohol in Indian Territory 1060
Manufacturer of stills; notice and permit 1021
Manufacturers of tobacco and cigars, returns of; power of attorney 1039
Manufacturing chemists and wholesale druggists; denatured alcohol 1092
Merchants sending orders for liquors; special tax 972
Methyl alcohol and benzine; denatured alcohol 1057
Mixed flour 971
Moneys, public; instructions relative to forwarding by express 1032

N.

Nonpayment, prosecution for; special tax 1038
Notice and permit; manufacturer of stills 1021

Digitized by Google

O.

Dept. No.

Offers in compromise 989, 995
Oleomargarine:
  Artificial coloration 994
  Foreign landing certificate or consignee's declaration 967
  Illicit manufacture 1065
Oleomargarine and renovated butter removed from packages for purposes of display 1018

P.

Partnership; special-tax stamp 1008
Peddler's bond, tobacco 984
Permit and notice; manufacturer of stills 1021
Permits to druggists and dealers in varnishes, paints, etc.; denatured alcohol 1085
Peruna, change in formula; special-tax stamp for sale of, not required 988
Playing cards; division of pack into two parts 1023
Porto Rico, sale of stamps in; act of June 29, 1906 ..... 1022, 1031
Power of attorney; returns of manufacturers of tobacco and cigars 1039
Prosecution for nonpayment; special tax 1038
Public moneys; instructions relative to forwarding by express 1032
Pure-food law; all inquiries should be addressed to Secretary of Agriculture .. 1090

R.

Records and reports relating to denatured alcohol 1080
Recovery of taxes, suits against collectors for; decision of court 974
Rectification; recovery of alcohol by distillation 968
Regulations No. 28 and supplement No. 1, fortification of pure sweet wines .. 1037
Renovated butter and oleomargarine removed from packages for purposes of display 1018
Renovated butter; laws applicable; decision of court 980
Restrictions as to shipping fermented liquors 1035
Retail dealers' record, Form 566; denatured alcohol 1073
Retail liquor dealers compounding spirits; special tax 1014
Retailing liquors on small boats 1007
Returns of—
  Manufacturers of tobacco and cigars; power of attorney 1039
  Taxpayers; T. D. 1039 defined 1046
  Tobacco and cigar manufacturers; enforcement of T. D. 1039 1047

S.

Sale of—
  Stamps in Porto Rico; act of June 29, 1906 ..... 1022, 1031
  Tobacco and cigars at public gatherings 969
  Whisky by corporation acting as fiduciary; special tax 1042
Scope of act of June 21, 1906; certified copies from list of special-tax payers .. 1050
Shellac varnishes, manufactures of; denatured alcohol 1083
Shipment of liquor by wholesale liquor dealer to himself; special tax 977
Shipments of liquor with bills of lading; special tax 982
Smoking tobacco, stamps on packages of 966
Special tax:
  Agents of wholesale liquor dealers 1072
  Assessments; liability of express companies 965
  Buffet in a lodge 1003
  Collins lemon ginger 1044
  Merchants sending orders for liquors 972
  Prosecution for nonpayment 1038
  Retail liquor dealers compounding spirits 1014
  Sale of whisky by corporations acting as fiduciary 1042
  Shipment of liquor by wholesale liquor dealer to himself 977
  Shipments of liquor with bills of lading 982
  Stamps; partnership 1008
  State liquor agents 973
  Tailors furnishing, with clothes, alcoholic liquors as premiums 1043
Special-tax payers:
  Alphabetical list of 1036
  Certified copies from list of; scope of the act of June 21, 1906 1050
  Relief to, where special-tax stamps have been lost or destroyed 1027

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Dept. No.
Spirits bottled in bond 991
Spirits, distilled. (*See* Distilled spirits.)
Spirits, retail liquor dealers compounding; special tax 1014
Stamps and brands on cases of bottled-in-bond whisky 1076
Stamps on packages of smoking tobacco 966
Stamps, sale of, in Porto Rico; act of June 29, 1906 ..... 1022, 1031
Stamps, use of wholesale liquor dealers' 1064, 1075, 1089
Stamp tax on manifests under war-revenue act; decision of court 983
State liquor agents; special tax 973
Stills, manufacturer of; notice and permit 1021
Storage:
Leaf tobacco 1002
Specially denatured alcohol 1066
Storekeepers, storekeeper-gaugers, and gaugers, transfer of 970
Suits against collectors for recovery of taxes; decision of court 974
Suits on distillers' bonds; decision of court 975, 979
Sulphuric ether; denatured alcohol 1070
Summons to produce books 993

T

Tailors furnishing alcoholic liquors as premiums with clothes 1043
Tax on distilled spirits seized for fraud and sold under forfeiture 1030
Taxpayers, returns of; T. D. 1039 defined 1046
Testing bottles for containing bottled-in-bond spirits 1063
Tobacco and cigar manufacturers; annual inventories 1081
Tobacco and cigars, returns of manufacturers 1039, 1047
Tobacco and cigars, sales of, at public gatherings 969
Tobacco, leaf. (*See* Leaf tobacco.)
Tobacco peddler's bond 984
Tobacco, smoking, stamps on packages of 966
Transfer of storekeepers, storekeeper-gaugers, and gaugers 970
Transparent soap manufactures of; denatured alcohol 1079

U.

Uniformity of blanks; accounts current 1028

V.

Varnishes; denatured alcohol 1055

W.

Warehousing bonds, distillers' 1004, 1040, 1054
Whisky bottled in bond, stamps and brands on cases of 1076
Whisky, sale of, by corporation acting as fiduciary; special tax 1042
Wholesale liquor dealer, shipment of liquor by, to himself; special tax 977
Wholesale liquors dealers, agents of; special tax 1072
Wholesale liquor dealers' stamps 1064, 1075, 1089
Wine, fortification of 1012, 1029, 1037

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